

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

PENNY KENNEDY, and
RAYMOND KENNEDY, individually
and as guardians and next
friends of
TREVOR KENNEDY, an infant
under the age of eighteen,

Plaintiffs,

v.

CIVIL ACTION NO. 2:03-0175

UNITED STATES OF AMERICA;
CHARLESTON AREA MEDICAL CENTER, INC.
dba Women and Children's Hospital of West Virginia
dba Women and Children's Hospital
dba CAMC Children's Hospital
dba Women and Children's Hospital;
INPHYNET HOSPITAL SERVICES, INC.,
a foreign corporation, doing business
in the State of West Virginia; and
GORDON J. GREEN, Dr., individually,

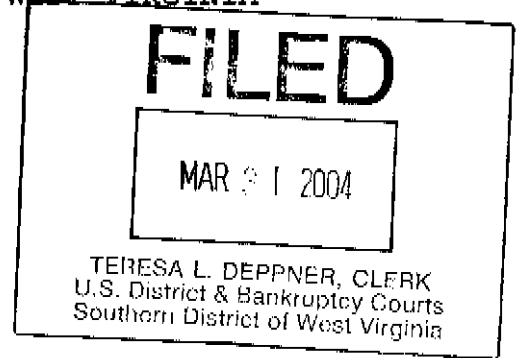
Defendants.

UNITED STATES MOTION FOR SUMMARY JUDGMENT

Comes now the United States of America ("United States"), by counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure and hereby moves the court for the entry of an order of summary judgment in its favor.

In support of its motion the United States says:

Based on the testimony of Julian Bailes, M.D., Trevor Kennedy's treating neurosurgeon, plaintiffs, as a matter of law, cannot establish that the alleged negligence of the United States increased the risk of harm to Trevor Kennedy, which increased risk of harm was a substantial factor in his ultimate outcome.



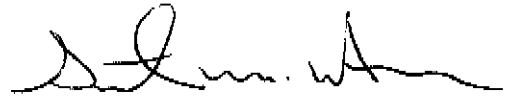
In further support of its motion the United States attaches hereto and incorporates herein a copy of the cited portions of the depositions of Penny Kennedy, the mother of Trevor Kennedy, and Julian Bailes, M.D., Trevor Kennedy's treating neurosurgeon at West Virginia University, along with its Memorandum of Law.

WHEREFORE, the United States prays this court enter an order of summary judgment in its favor on the grounds set forth herein.

Respectfully submitted,

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United States Attorney

By:


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(PENNY LEA KENNEDY)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

PENNY KENNEDY,
RAYMOND KENNEDY,
Individually and as guardians
and next friends of TREVOR KENNEDY,
an infant under the age of eighteen,

PLAINTIFFS,

VS.

CIVIL ACTION NO. 2:03-0175
Charles Haden, II, Judge

UNITED STATES OF AMERICA;
CHARLESTON AREA MEDICAL CENTER, INC.,
d/b/a WOMEN AND CHILDREN'S HOSPITAL OF
WEST VIRGINIA, d/b/a WOMEN AND CHILDREN'S
HOSPITAL, d/b/a CAMC CHILDREN'S HOSPITAL,
d/b/a CAMC WOMEN'S HOSPITAL, d/b/a CAMC
WOMEN AND CHILDREN'S HOSPITAL;
INPHYNET HOSPITAL SERVICES, INC.,
a foreign corporation, doing business
in the state of West Virginia; and
DR. GORDON J. GREEN, individually,

DEFENDANTS.

 COPY

THE DEPOSITION OF PENNY LEA KENNEDY WAS TAKEN ON
THE 16TH DAY OF JANUARY 2004, BEGINNING AT 11:45 A.M., AT THE
OFFICES OF LAMBERT & NEW, ROUTE 52, MAIN STREET, GILBERT,
WEST VIRGINIA, BY NOTICE, PURSUANT TO THE FEDERAL RULES OF
CIVIL PROCEDURE IN THE ABOVE-STYLED CIVIL ACTION, WHICH IS
NOW PENDING AND UNDETERMINED IN SAID COURT.

REPORTED BY: CAROL C. SMITH, CVR-CM, NOTARY PUBLIC
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(PENNY LEA KENNEDY)

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I N D E X

WITNESS: PENNY LEA KENNEDY

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EXHIBITS:

EXHIBIT NO. 1	4
(CAMC DISCHARGE INSTRUCTIONS)	

EXHIBIT NO. 2	57
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1 (WHEREUPON, DEPOSITION
2 EXHIBIT NO. 1 WAS MARKED
3 IDENTIFICATION.)
4 (WITNESS SWORN.)

5 THEREUPON CAME

6 P E N N Y L E A K E N N E D Y ,
7 A PLAINTIFF HEREIN, WHO, HAVING BEEN FIRST DULY SWORN,
8 ACCORDING TO LAW, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

9 EXAMINATION

10 BY MS. MCELHINNY:

11 Q MRS. KENNEDY, COULD YOU PLEASE STATE YOUR FULL NAME
12 FOR THE RECORD.

13 A PENNY LEA KENNEDY.

14 Q L-E-I-G-H?

15 A L-E-A.

16 Q L-E-A. OKAY.

17 MS. MCELHINNY: NOW, YOU WERE HERE FOR YOUR
18 HUSBAND'S DEPOSITION, SO YOU KIND OF HEARD MY LITTLE SPEEL
19 ABOUT THE RULES. IF YOU NEED TO TAKE A BREAK -- I KNOW
20 YOU'VE BEEN SITTING HERE FOR A WHILE WITH US, SO IF YOU NEED
21 A BREAK, DON'T BE SHY ABOUT ASKING FOR ONE. THIS ISN'T AN
22 ENDURANCE TEST.

23 IF YOU DON'T UNDERSTAND ANYTHING I'M ASKING, PLEASE
24 ASK ME TO CLARIFY, BECAUSE I WANT TO MAKE SURE WE'RE
25 UNDERSTANDING EACH OTHER HERE. OKAY?

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1 THE WITNESS: OKAY.

2 BY MS. MCELHINNY:

3 Q PENNY, HAVE YOU EVER BEEN DEPOSED BEFORE?

4 A NOT THAT I CAN REMEMBER.

5 Q NOW, YOU LISTENED TO YOUR HUSBAND'S DEPOSITION
6 TESTIMONY. WAS THERE ANYTHING THAT HE SAID THAT YOU DISAGREE
7 WITH?

8 A HE JUST DOESN'T GET DATES AND THINGS RIGHT.

9 Q WHAT DATES DO YOU THINK HE GOT WRONG IN HIS
10 DEPOSITION? I KNOW HE WAS A LITTLE BIT UNCLEAR ABOUT SOME
11 THINGS, BUT --

12 A YEAH. ACTUALLY, TO BE HONEST, THE TIME THAT TREVOR
13 ACTUALLY STARTED HAVING THE PROBLEMS WAS RIGHT AFTER EASTER,
14 WE WERE HAVING EASTER DINNER, AND IT WASN'T THE BIRTHDAY
15 PARTY. IT WAS JUST RIGHT AFTER HIS SECOND BIRTHDAY, WHICH
16 THEY WERE IN THE SAME MONTH; IT WAS JUST A LITTLE BIT LATER.

17 Q SO YOU THINK THE PROBLEMS ACTUALLY STARTED WHEN YOU
18 WERE HAVING A DINNER FOR EASTER, THE FIRST TIME YOU NOTICED
19 IT?

20 A IT WAS RIGHT AROUND EASTER THERE. IT WAS ON EASTER
21 SUNDAY THAT WE ACTUALLY -- HE HAD HIS FIRST BAD EPISODE, THE
22 WAY MY HUSBAND WAS TALKING, YOU KNOW, WITH HIM BEING STIFF,
23 AND HE WOULD JUST BE LEANING OVER THE COFFEE TABLE OR
24 SOMETHING, BECAUSE THAT'S WHERE HE WOULD PLAY. AND HE WOULD
25 JUST, LIKE HE SAID, HUNCH HIS BACK TO WHERE HE COULDN'T BE

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1 STANDING STRAIGHT UP, AND HE'D JUST BE REALLY STIFF.

2 AND THEN I THINK IT WAS JUST -- I CALLED THE
3 PEDIATRICIAN ON THAT MONDAY. THEY MADE AN APPOINTMENT, AND I
4 TOOK HIM THAT VERY NEXT WEEK. THAT DAY I JUST GAVE HIM LIKE
5 REGULAR TYLENOL AND THINGS, BECAUSE I WASN'T EXACTLY SURE
6 WHAT IT WAS AT THAT POINT IN TIME.

7 Q WHEN HE HAD THAT FIRST REALLY BAD EPISODE, DID YOU
8 ALL HAVE THE FAMILIES OVER FOR DINNER? WERE THERE OTHER
9 PEOPLE AROUND?

10 A AT THE POINT HE HAD THE FIRST ONE, WE WERE JUST
11 GETTING HIM READY THAT MORNING FOR CHURCH, AND EVERYONE
12 WASN'T ACTUALLY THERE AT THE FIRST ONE. THEN LATER THAT DAY
13 HE HAD ANOTHER EPISODE, AND THEY WERE THERE.

14 Q AND WAS IT PRETTY MUCH EVERYBODY FROM BOTH FAMILIES
15 WERE THERE?

16 A I DON'T ACTUALLY HAVE A LARGE FAMILY, SO, ACTUALLY,
17 IT WAS MY MOM AND DAD, MY SISTER AND HER FAMILY, HER HUSBAND,
18 HER SON, THAT I REMEMBER IN MY FAMILY. HIS FAMILY WAS HIS MOM
19 AND THE STEPDA, HIS GRANDMOTHER, HIS AUNT ARETTA BLANKENSHIP
20 THAT THEY SPOKE OF EARLIER. IT'S JUST BEEN AWHILE, AND I
21 CAN'T REMEMBER EXACTLY EVERYBODY. BUT I KNOW WE HAD, YOU
22 KNOW, PRETTY MUCH A HOUSEFUL.

23 Q SOUNDS LIKE A LOT OF PEOPLE TO COOK FOR.

24 A YEAH.

25 Q I'M GOING TO ASK YOU SOME MORE QUESTIONS ABOUT HIS

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15

1 Q NOW, THE TIME WHEN HE FIRST STARTED HAVING THE BAD
2 SPELLS ON EASTER, ABOUT HOW LONG DO YOU RECALL THEM LASTING,
3 EACH INDIVIDUAL SPELL?

4 A NORMALLY, HE WOULD HAVE THE PAIN, WE WOULD GIVE HIM
5 THE MOTRIN OR TYLENOL -- AT FIRST WE STARTED WITH TYLENOL,
6 AND THEN IT WENT TO MOTRIN. USUALLY, ABOUT A HALF HOUR TO
7 FORTY-FIVE MINUTES, IT WOULD START WORKING. SO I THINK --
8 THE WAY THEY EXPLAINED IT TO ME -- I DIDN'T KNOW THEN, BUT
9 THE WAY THEY EXPLAINED IT TO ME WAS IT WOULD KIND OF EASE THE
10 PAIN AND TAKE AWAY SOME OF THE SWELLING, AND HE WOULDN'T FEEL
11 THE PAIN AS MUCH, SO HE SEEMED TO, YOU KNOW, MOVE AROUND A
12 LITTLE BIT MORE.

13 BUT FOR THAT HALF HOUR TO FORTY-FIVE MINUTES, HE
14 WOULD JUST, YOU KNOW, KIND OF LAY STIFF, AND I'D KIND OF WRAP
15 HIM UP IN BLANKETS AND THINGS TO MAKE SURE, YOU KNOW, IF IT
16 WAS THAT HE WAS COLD OR SOMETHING LIKE THAT THAT HE COULDN'T
17 MOVE, THAT, YOU KNOW, I CAN KIND OF TAKE CARE OF HIM, PUT HIM
18 ON THE COUCH AND JUST SIT WITH HIM.

19 BUT AFTER ABOUT THIRTY TO FORTY-FIVE MINUTES HE'D
20 START KIND OF MOVING AROUND A LITTLE BIT.

21 Q AND WHEN IT FIRST STARTED HAPPENING AROUND EASTER
22 TIME, ABOUT HOW MANY OF THESE SPELLS WOULD HE HAVE PER DAY?

23 A WHEN IT FIRST STARTED OUT, HE WAS JUST HAVING MAYBE
24 A COUPLE A DAY.

25 Q WAS THERE A PARTICULAR TIME OF DAY THAT HE TENDED

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16

1 TO HAVE THEM?

2 A NORMALLY, AFTER HE GOT UP -- WHEN HE FIRST GOT UP,
3 HE COULD PLAY FOR A LITTLE WHILE, AND THEN HE WOULD HAVE AN
4 EPISODE. WE'D GIVE HIM THE MOTRIN. HE WOULD PLAY FOR A
5 LITTLE BIT LONGER. THEN MAYBE EARLY AFTERNOON, LATE
6 AFTERNOON SOMETIMES, HE'D HAVE ANOTHER EPISODE.

7 Q DID THE SYMPTOMS REMAIN ABOUT THE SAME FROM THE
8 TIME HE FIRST STARTED HAVING THEM ON EASTER UNTIL THE E.R.
9 VISIT ON APRIL 30TH, 2000?

10 A NO.

11 Q HOW DID THEY CHANGE?

12 A THE PAIN BECAME MORE SEVERE, I WOULD ASSUME. LIKE
13 I SAY, I CAN'T SAY THAT, BUT I KNOW HE WOULD CRY A LOT MORE
14 OFTEN WITH THE PAIN. HE WOULD CRY A LOT LOUDER, SAYING THAT
15 IT HURT REALLY BAD.

16 BY THE TIME THAT I HAD TAKEN HIM -- YOU'RE TALKING
17 ABOUT THE EMERGENCY ROOM AT CHARLESTON?

18 Q YES. YES, CHARLESTON.

19 A OKAY. THE MORNING THAT I TOOK HIM TO THE EMERGENCY
20 ROOM AT CHARLESTON, HE HAD AN EPISODE THAT STARTED AROUND
21 NINE THIRTY, BETWEEN NINE THIRTY AND TEN O'CLOCK THAT
22 MORNING, AND I GAVE HIM THE MOTRIN; IT DIDN'T HELP. AN HOUR
23 TO AN HOUR AND A HALF WENT BY. HE WAS STILL SCREAMING WITH
24 PAIN, SO I DECIDED -- THAT CLINIC -- THAT WAS ON A SUNDAY.
25 APRIL 30TH WAS ON A SUNDAY. I REMEMBER BECAUSE MY PARENTS --

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17

1 I HAD TO FIND THEM, BECAUSE MY MOTHER ALWAYS GOES WITH ME.

2 SO I TOLD MY MOTHER, I SAID "WELL, THE CLINIC IS
3 NOT OPEN. WE'LL GO AHEAD AND TAKE HIM DOWN TO WOMEN AND
4 CHILDREN'S, BECAUSE THEY'RE A SPECIALTY HOSPITAL." I SAID
5 "I'M TIRED OF, YOU KNOW, NOT GETTING ANSWERS, NOT FINDING OUT
6 WHAT'S WRONG, SO WE'RE GOING TO TAKE HIM TO THIS SPECIALTY
7 HOSPITAL." I SAID "I'VE HEARD THEY'RE REALLY GOOD. WE'LL GO
8 AHEAD AND GET HIM, YOU KNOW, SOME TESTING AND HELP THERE."

9 HIS EPISODE LASTED -- WE ARE APPROXIMATELY, I WOULD
10 SAY, A GOOD TWO HOURS AWAY FROM WOMEN AND CHILDREN'S FROM
11 WHERE WE LIVE, BECAUSE WE LIVE BACK TOWARD THE BAILEYSVILLE
12 AREA. IT LASTED ALL THE TIME THAT WE WERE DRIVING. AND IF
13 MY MEMORY SERVES ME RIGHT, I THINK AFTER WE GOT THERE, THEY
14 GAVE HIM MORE MOTRIN, AND I'M NOT SURE WHAT ELSE THEY GAVE
15 HIM, BUT I KNOW THAT THEY GAVE HIM SOME MOTRIN, AND HE
16 FINALLY GOT ENOUGH RELIEF TO WHERE HE WAS ABLE TO LAY DOWN
17 AND TAKE A NAP RIGHT AROUND, I'D SAY, ONE O'CLOCK, BETWEEN
18 ONE AND ONE THIRTY, FROM AROUND NINE THIRTY THAT MORNING.

19 Q AT THE ONE TO ONE THIRTY TIME, WAS HE STILL STIFF
20 BUT ABLE TO NAP, OR HAD IT PASSED AND HE WAS NO LONGER STIFF?

21 A I DON'T THINK HE WAS STIFF AT THAT POINT IN TIME,
22 BUT HE JUST -- I GUESS WHERE HE HAD HURT SO LONG, HE WAS KIND
23 OF AFRAID TO MOVE. HE JUST DIDN'T MOVE. HE WASN'T STIFF,
24 BUT HE WOULD JUST LAY THERE. HE WOULDN'T MOVE AROUND.

25 Q DID ANYONE ELSE GO TO CHARLESTON WITH YOU ON THAT

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1 DAY OTHER THAN YOUR MOM?

2 A MY SISTER, JERRI BAILEY, AND MY DAUGHTER, WHITNEY.

3 MS. EIFERT: I'M SORRY? WHO DID YOU SAY WENT WITH
4 YOU?

5 THE WITNESS: MY MOM, MY SISTER, JERRI BAILEY, AND
6 MY DAUGHTER, WHITNEY.

7 MS. EIFERT: OKAY.

8 BY MS. MCELHINNY:

9 Q NOW, WHEN YOU FIRST GOT TO CAMC, I TAKE IT YOU WENT
10 TO THE EMERGENCY DEPARTMENT, CORRECT?

11 A YES.

12 Q WHEN YOU FIRST GOT THERE, DID YOU SEE A TRIAGE
13 PERSON, A NURSE?

14 A YES.

15 Q AT THAT POINT, DO YOU REMEMBER ABOUT WHAT TIME IT
16 IS THAT YOU SAW THE TRIAGE NURSE?

17 A (NO RESPONSE.)

18 Q WELL, ACTUALLY, LET'S TRY IT THIS WAY. IT LOOKS
19 LIKE YOU'RE HAVING TROUBLE REMEMBERING. YOU SAID IT'S ABOUT
20 A TWO-HOUR DRIVE FROM YOUR HOME. DO YOU REMEMBER ABOUT WHAT
21 TIME YOU LEFT HOME TO GO TO CHARLESTON?

22 A I WOULD SAY AROUND BETWEEN TEN AND TEN FIFTEEN,
23 SOMEWHERE AROUND THERE.

24 Q OKAY.

25 A BECAUSE HE STARTED HAVING THE EPISODE, AND WHEN I

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19

1 COULDN'T GET THE MEDICATION TO WORK WITHIN, YOU KNOW, THE
2 PERIOD OF TIME THAT IT NORMALLY DID WORK, THEN I KIND OF GOT
3 WORRIED, AND I KNEW THAT I COULDN'T HANDLE IT MYSELF. THEN I
4 CALLED MY MOM AND HAD HER GET READY, AND WE WENT AHEAD AND
5 LEFT.

6 Q SO THAT WOULD PUT YOU IN CHARLESTON SOMETIME
7 SHORTLY AFTER NOON, MAYBE, TWENTY-THIRTY, SOMETIME AROUND
8 THERE? DOES THAT SOUND ABOUT RIGHT?

9 A SOMEWHERE AROUND ELEVEN THIRTY TO TWELVE, SOMETHING
10 LIKE THAT.

11 Q AND AT THE TIME THAT YOU SAW THAT INITIAL TRIAGE
12 PERSON, WHAT WAS TREVOR'S CONDITION LIKE, IF YOU REMEMBER?

13 A I REMEMBER WHEN WE SAW THE NURSE YOU'RE TALKING
14 ABOUT, SHE WANTED US TO HAVE HIM WEIGHED AND THINGS LIKE
15 THAT, AND HE WAS JUST REALLY IN A LOT OF PAIN, SCREAMING AND
16 HOLDING ONTO US. SHE COULDN'T GET HIM TO DO THE THINGS THAT
17 SHE WANTED HIM TO DO.

18 THEN WHEN THEY TOOK HIM FROM THERE AND PUT HIM BACK
19 IN THE ROOM OR WHATEVER, THE LITTLE PLACE THERE, HE STILL,
20 YOU KNOW, CRIED. AND THEY HAD A LITTLE ROCKING CHAIR THERE,
21 AND MY MOM WOULD ROCK HIM.

22 Q YOUR HUSBAND KIND OF DESCRIBED HIM AS BEING REAL
23 STIFF AND BENT OVER.

24 A YES.

25 Q WAS HE LIKE THAT AT THE TIME HE WAS THERE AT CAMC,

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20

1 OR WAS IT JUST THAT HE WAS CRYING AND --

2 A AT FIRST, YOU KNOW, HIS LEGS WERE LIKE PULLED UP.
3 AND, YOU KNOW, AFTER THEY GAVE HIM THE TYLENOL, MOTRIN,
4 WHATEVER, THEN AFTER THAT HE STARTED, YOU KNOW, LIMBERING OUT
5 A LITTLE BIT.

6 Q WHEN YOU FIRST GOT TO --

7 A BUT WHEN WE FIRST GOT THERE, HE WAS STILL STIFF.
8 HE WAS STILL LIKE DRAWED UP A LITTLE.

9 Q WAS HE ABLE TO WALK AT THAT TIME?

10 A NO. WE CARRIED HIM. HE COULDN'T STAND UP FOR HER
11 TO WEIGH HIM. I THINK SHE LAID HIM ON BABY SCALES TO GET HIS
12 WEIGHT.

13 Q NOW, YOU SAID THEY TOOK YOU BACK TO THE LITTLE
14 EXAMINATION ROOM, AND THERE WAS A ROCKING CHAIR THERE, AND
15 YOUR MOM ROCKED HIM A LITTLE BIT?

16 A YES.

17 Q AND THEY GAVE HIM SOME MOTRIN, IT SOUNDS LIKE,
18 BEFORE THE DOCTOR CAME TO SEE HIM?

19 A I THINK HE HAD MOTRIN. I'M NOT SURE. IT WAS
20 EITHER MOTRIN OR TYLENOL. THEY GAVE HIM SOMETHING FOR THE
21 PAIN.

22 Q AND THAT WAS BEFORE A DOCTOR CAME BACK TO SEE HIM,
23 OR AFTER?

24 A NO. I THINK THE DOCTOR ACTUALLY EXAMINED HIM
25 FIRST, BECAUSE SHE SAID SHE COULDN'T GIVE HIM ANYTHING UNLESS

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21

1 THE DOCTOR TOLD HER TO.

2 Q DO YOU REMEMBER THE NAME OF THE DOCTOR THAT FIRST
3 EXAMINED HIM?

4 A I THINK IT WAS ACTUALLY DR. GREEN THAT SAW HIM
5 FIRST AFTER THE NURSE.

6 Q BASED ON THE MEDICAL RECORDS, IT LOOKS LIKE THERE
7 WAS A RESIDENT NAMED DR. CURTIS WHO EXAMINED HIM AND THEN A
8 DR. GREEN WHO ALSO EXAMINED HIM. DO YOU REMEMBER TWO
9 DOCTORS, OR IS IT ALL KIND OF BLURRED IN YOUR HEAD?

10 A YEAH, A LITTLE.

11 Q I KNOW SOME TIME HAS PASSED.

12 A YEAH.

13 Q AND IF YOU DON'T REMEMBER, I WANT TO KNOW YOU DON'T
14 REMEMBER. I DON'T WANT YOU TO GUESS.

15 DO YOU REMEMBER TWO DIFFERENT DOCTORS SEEING HIM,
16 OR DO YOU JUST REMEMBER ONE?

17 A I ONLY REMEMBER THE LAST ONE THAT YOU SPOKE OF, DR.
18 GREEN, AND A NURSE.

19 Q WHEN THE FIRST DOCTOR CAME IN TO EXAMINE HIM, YOU
20 THINK IT WAS DR. GREEN, OR ARE YOU NOT SURE IF IT WAS DR.
21 GREEN OR THE RESIDENT?

22 A I DON'T EVEN REMEMBER THE OTHER DOCTOR YOU'RE
23 TALKING ABOUT, SO, TO MY MEMORY, I WOULD HAVE TO REMEMBER THE
24 TIME THAT WE SPENT WITH DR. GREEN.

25 Q WHAT --

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22

1 A BECAUSE I REMEMBER HE INTRODUCED HIMSELF AND SHOOK
2 MY HAND.

3 Q WHAT DO YOU REMEMBER TELLING DR. GREEN ABOUT
4 TREVOR'S PROBLEMS?

5 A I TOLD HIM -- HE ASKED ME HOW LONG TREVOR HAD HAD
6 THE PROBLEMS. I EXPLAINED TO HIM THAT IT STARTED RIGHT
7 AROUND EASTER AND THAT WE HAD TAKEN HIM TO HIS REGULAR
8 PEDIATRICIAN, WHO TOLD US THAT THE DIAGNOSIS WAS SOMETHING
9 CALLED SYNOVITIS. HE SAID IT'S WHEN YOU HAVE A RESPIRATORY
10 INFECTION, THE ANTIBIOTIC DOESN'T CLEAR UP ALL THE INFECTION
11 BUT IT JUST RUNS IT TO ANOTHER PLACE, AND IT SETS IN YOUR
12 JOINTS AND CAUSES JOINT PAIN.

13 AND THEN AT THAT POINT IN TIME HE SAID -- I'M
14 TRYING TO GET THIS RIGHT. I THINK HE SAID SOMETHING ABOUT
15 "WE'LL DO SOME TESTING TO SEE WHAT WE THINK IT IS." AND I
16 REMEMBER HE DID A BLOOD TEST, AND TREVOR HAD SOME X-RAYS
17 THERE, BUT I CAN'T REMEMBER A LOT MORE THAN THE BLOOD TEST
18 AND THE X-RAYS.

19 Q I KNOW IT'S BEEN A LONG TIME SINCE THAT E.R. VISIT.
20 DO YOU REMEMBER WHAT KIND OF THINGS DR. GREEN DID, IN TERMS
21 OF ACTUALLY PHYSICALLY EXAMINING TREVOR? IF YOU DON'T
22 REMEMBER, THAT'S OKAY; JUST TELL ME.

23 A I KNOW THAT HE STRAIGHTENED HIS LEGS OUT AND DID
24 SOMETHING LIKE PUTTING HIS HAND ON THE BOTTOM OF HIS FEET AND
25 PUTTING PRESSURE ON HIS LEGS OR SOMETHING. BECAUSE TREVOR

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23

1 WAS SO SMALL, I DON'T THINK HE WOULD UNDERSTAND, YOU KNOW,
2 "LIFT YOUR LEG" OR DO SOMETHING LIKE THAT. I DON'T THINK HE
3 DID ANYTHING LIKE THAT. HE JUST DID HIS OWN EXAMINATION. HE
4 DIDN'T ASK TREVOR TO DO ANYTHING.

5 Q SO YOU THINK HE SORT OF MOVED HIS LEGS, DR. GREEN
6 MOVED TREVOR'S LEGS, THAT KIND OF THING?

7 A YES.

8 Q DO YOU REMEMBER DR. GREEN HAVING TREVOR WALK?

9 A NO. AT THE FIRST INITIAL EXAMINATION WITH DR.
10 GREEN, HE WASN'T ABLE TO STAND REALLY WELL, SO DR. GREEN TOLD
11 US NOT TO, YOU KNOW, LET HIM DOWN, NOT TO PUT HIM ON THE
12 FLOOR. I GUESS HE WAS AFRAID HE WOULD FALL.

13 BUT AFTER THE MEDICATION STARTED WORKING, I
14 REMEMBER AFTER THAT TREVOR DID WALK FOR HIM.

15 Q HE WALKED FOR DR. GREEN?

16 A YES. AFTER THE PAIN MEDICATION STARTED WORKING, HE
17 DID WALK FOR THE DOCTOR.

18 Q DID DR. GREEN TELL YOU WHAT KINDS OF THINGS HE WAS
19 LOOKING FOR WITH THE TESTS?

20 A I DON'T REMEMBER IF HE STATED ANYTHING SPECIFIC, AS
21 TO A SPECIFIC DIAGNOSIS HE WAS LOOKING FOR.

22 Q NOW, YOU SAID YOU WERE THERE FOR A WHILE, DR. GREEN
23 DID HIS INITIAL EXAMINATION, AND IT SOUNDS LIKE THEY GAVE HIM
24 THE MOTRIN OR THE TYLENOL, WHATEVER IT WAS, AND AT SOME POINT
25 DR. GREEN CAME BACK AND CHECKED HIM AGAIN?

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24

1 A YES. AFTER HE GOT THE RESULTS BACK FROM THE TESTS
2 THAT HE HAD DONE.

3 Q AND THAT'S WHEN HE HAD TREVOR WALK FOR HIM?

4 A YES.

5 Q AND DID HE TELL YOU WHAT THE RESULTS WERE OF THE
6 TESTS?

7 A I REMEMBER HIM GOING OVER SOME THINGS, SAYING
8 SOMETHING ABOUT HIS LEVELS IN HIS BLOOD OR SOMETHING THAT I
9 DIDN'T UNDERSTAND. MY SISTER PROBABLY UNDERSTOOD IT BETTER
10 THAN ME.

11 BUT AT THE END HE SAID "I THINK THAT YOUR
12 PEDIATRICIAN WAS PROBABLY ON THE RIGHT TRACK," HE SAID, "SO
13 WHAT I'M GOING TO SAY IS THAT I'LL AGREE WITH HIS DIAGNOSIS
14 AND THAT YOU NEED TO FOLLOW BACK UP WITH HIM."

15 HE SAID THAT "IF THE PROBLEM PERSISTS, THEN YOU
16 PROBABLY NEED TO GET HIM TO WRITE YOU A REFERRAL TO AN
17 ORTHOPEDIC DOCTOR," I BELIEVE IT WAS.

18 Q I'M GOING TO SHOW YOU A DOCUMENT THAT I'VE HAD THE
19 COURT REPORTER MARK AS DEPOSITION EXHIBIT 1, AND I WANT YOU
20 TO TAKE A LOOK AT THAT FOR ME.

21 HAVE YOU HAD A CHANCE TO TAKE A LOOK AT THAT?

22 A YES.

23 Q DO YOU RECOGNIZE THAT DOCUMENT?

24 A I DON'T ACTUALLY REMEMBER IT, BUT I KNOW WHAT IT
25 IS.

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25

1 Q WHAT IS IT?

2 A IT'S THE DISCHARGE.

3 Q THE DISCHARGE INSTRUCTIONS FROM CHARLESTON AREA
4 MEDICAL CENTER?

5 A YES.

6 Q AND IS THAT YOUR SIGNATURE WHERE IT SAYS "PATIENT'S
7 SIGNATURE"?

8 A YES, IT IS.

9 Q AND YOU SAID YOU DON'T REMEMBER THIS. DO YOU NOT
10 REMEMBER GETTING A COPY OF THE DISCHARGE INSTRUCTIONS AT
11 CAMC?

12 A I DON'T REMEMBER WHETHER I DID OR DIDN'T.

13 Q BUT THAT LOOKS LIKE YOUR SIGNATURE THERE?

14 A YES.

15 Q AND IT'S OBVIOUSLY DATED 4-30-00, WHICH WOULD HAVE
16 BEEN THE DATE OF TREVOR'S E.R. VISIT AT CAMC.

17 IT LOOKS LIKE THAT THE INSTRUCTIONS ARE TO CALL TO
18 ARRANGE AN APPOINTMENT WITH YOUR PRIMARY DOCTOR. DO YOU SEE
19 THAT WHERE IT SAYS UNDER "SPECIFIC INSTRUCTIONS"?

20 A YES.

21 Q AND THAT SOUNDS CONSISTENT WITH WHAT YOU REMEMBER
22 DR. GREEN TELLING YOU, THAT YOU SHOULD FOLLOW UP WITH YOUR
23 PEDIATRICIAN, CORRECT?

24 A UH-HUH. YES.

25 Q AND THEN DOWN UNDER "OTHER INSTRUCTIONS," IT SAYS

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1 TO GIVE CHILDREN'S MOTRIN OR ADVIL, ONE TEASPOON EVERY SIX
2 HOURS. DOES THAT SOUND LIKE WHAT THEY TOLD YOU TO DO?

3 A YES.

4 Q AND THEN BELOW THAT IT SAYS "IF SYMPTOMS PERSIST,
5 MAY NEED REFERRAL TO ORTHOPEDIC DOCTOR." AND THAT SOUNDS
6 LIKE WHAT YOU REMEMBER DR. GREEN TELLING YOU, TOO?

7 A YES.

8 Q DO YOU HAVE ANY REASON TO THINK THAT YOU DIDN'T GET
9 THIS DISCHARGE INSTRUCTION AT CAMC?

10 A NO.

11 Q AFTER TREVOR GOT THE PAIN MEDICATION AT CAMC IN THE
12 E.R. AND WAS ABLE TO WALK FOR DR. GREEN, DID HE HAVE ANY
13 FURTHER EPISODES WHILE YOU WERE STILL IN THE E.R.?

14 A NO. NOT WHILE WE WERE THERE, NO.

15 Q AFTER YOU ALL LEFT THE E.R. THAT EVENING, I TAKE IT
16 YOU DROVE BACK TO YOUR HOME?

17 A YES.

18 Q AND DID TREVOR HAVE ANOTHER EPISODE THAT EVENING?

19 A I CAN'T REMEMBER IF HE HAD ONE THAT DAY, BUT I DO
20 REMEMBER THE NEXT MORNING HE HAD ANOTHER ONE.

21 Q OKAY.

22 WHAT WAS TREVOR'S CONDITION LIKE IN THOSE -- IT
23 LOOKS LIKE ABOUT EIGHT DAYS LATER YOU TOOK TREVOR TO SEE DR.
24 JONES AT WVU, BASED ON THE MEDICAL RECORDS. WHAT WAS
25 TREVOR'S CONDITION LIKE BETWEEN THE TIME YOU ALL LEFT THE

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28

1 THAT YOU COULD DO FOR THE PAIN EXCEPT TO GIVE THE MOTRIN AND
2 THE TYLENOL AND JUST TO BE PATIENT.

3 Q DID TREVOR DEVELOP ANY ADDITIONAL SYMPTOMS, ANY
4 PROBLEMS EATING, AT THAT POINT, BEFORE THE VISIT TO DR.
5 JONES?

6 A HE WASN'T EATING AS MUCH AT THE POINT THAT I TOOK
7 HIM TO DR. JONES. HE WAS NOT EATING AS MUCH AS HE NORMALLY
8 DID, AND I THOUGHT IT WAS JUST BECAUSE OF THE MEDICATION,
9 THAT I WAS GIVING HIM A LOT OF MEDICATION AND THE MEDICATION
10 WAS, YOU KNOW, HELPING HIM TO SLEEP AND THINGS, SO I THOUGHT
11 IT WAS JUST WHERE HE WAS NOT UP AS MUCH, SO HE WASN'T EATING
12 AS MUCH.

13 Q AND HOW WAS IT THAT YOU MADE THE DECISION TO GO TO
14 SEE DR. JONES AT WVU?

15 A AFTER MAKING THE PHONE CALLS TO THE DOCTOR AND THEY
16 WERE NOT HELPING BY SUGGESTING ANYTHING ADDITIONALLY, WHERE
17 MY SISTER IS A NURSE, OR WAS A NURSE OVER HERE AT THE OTHER
18 OFFICE, I ASKED HER TO ASK FOR A PERSONAL FAVOR FOR A
19 REFERRAL TO SEE IF I CAN TAKE HIM SOMEWHERE ELSE AND GET A
20 SECOND OPINION.

21 Q SO THAT WOULD HAVE BEEN DR. RALLOS?

22 A ACTUALLY, DR. RALLOS IS WHO THEY ACTUALLY WENT BY,
23 BUT LEONA HAMRICK, THE PHYSICIAN'S ASSISTANT, WAS ACTUALLY
24 THE ONE THAT GAVE ME THE REFERRAL SLIP. SHE WAS A
25 PHYSICIAN'S ASSISTANT UNDER DR. RALLOS THERE AT THE TIME.

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29

1 Q DID SHE ACTUALLY EXAMINE TREVOR, OR DID SHE JUST,
2 BASED ON WHAT YOU WERE TELLING HER, GO AHEAD AND GIVE YOU A
3 REFERRAL SLIP?

4 A BASED ON WHAT I WAS TELLING HER, SHE JUST DID IT AS
5 A PERSONAL FAVOR TO MY SISTER, I'M ASSUMING. I MEAN SHE
6 DIDN'T SAY THAT, BUT THAT'S WHAT I ASSUME.

7 Q DO YOU REMEMBER WHEN YOU GOT THE REFERRAL TO GO SEE
8 DR. JONES?

9 A NO. MY SISTER TOOK CARE OF ALL THAT. SHE ACTUALLY
10 GOT THE REFERRAL FROM LEONA HAMRICK AND WENT AHEAD AND CALLED
11 FROM THE CLINIC THERE AND MADE AN APPOINTMENT, ACTING AS
12 LEONA'S NURSE.

13 Q SO YOUR SISTER WOULD BE THE BEST PERSON TO ASK
14 ABOUT THAT WHOLE PROCESS?

15 A YEAH, PROBABLY SO. BECAUSE THE -- I DON'T THINK --
16 I'M NOT SURE, BUT I DON'T THINK THAT -- BECAUSE HE IS A
17 SPECIALIST, I DON'T THINK HE TAKES THEM UNLESS THERE'S A
18 REFERRAL. I THINK THAT WAS THE SITUATION.

19 Q YEAH. I THINK HE'S PRETTY TOUGH TO GET IN TO.
20 HE'S THE ONLY PEDIATRIC ORTHOPEDIC DOCTOR IN THE STATE RIGHT
21 NOW, SO HAVING HAD A SMALL CHILD WHO NEEDED A REFERRAL TO A
22 PEDIATRIC ORTHOPEDIC PERSON, IT'S VERY DIFFICULT.

23 SO YOU WENT TO SEE DR. JONES UP IN MORGANTOWN, IT
24 LOOKS LIKE FROM THE RECORDS, ON MAY 8, 2000.

25 A YES.

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30

1 Q DO YOU REMEMBER WHAT TREVOR'S SYMPTOMS WERE LIKE AT
2 THE TIME OF THAT VISIT?

3 A NO. I ACTUALLY DON'T REMEMBER.

4 Q OKAY.

5 A YOU'RE TALKING ABOUT ACTUALLY IN THE OFFICE THAT
6 DAY?

7 Q YES. IN THE OFFICE THAT DAY, WHAT . . .

8 A I DON'T THINK -- HE WASN'T IN PAIN AT THAT POINT IN
9 TIME, BUT THE DOCTOR DID DO AN EXAMINATION, YOU KNOW, HAVE
10 HIM WALK FOR HIM.

11 Q DID HE DO THE SAME KINDS OF THINGS THAT DR. GREEN
12 HAD DONE IN THE E.R.?

13 A I'M NOT REAL SURE, BUT I THINK THAT IT WAS PRETTY
14 MUCH AROUND THE SAME THING.

15 Q AND WHAT DID DR. JONES TELL YOU HE THOUGHT THE
16 PROBLEM WAS?

17 A HE SAID THAT DEFINITELY IT WAS NOT AN ORTHOPEDIC
18 PROBLEM, BASED ON THE REVIEW OF THE MEDICAL RECORDS, BECAUSE
19 I HAD TO TAKE A COPY OF ALL THE MEDICAL RECORDS FROM
20 COMMUNITY HEALTH FOUNDATION AND THE E.R. VISIT FROM CAMC. HE
21 SAID IT DEFINITELY DID NOT PRESENT ITSELF AS AN ORTHOPEDIC
22 PROBLEM. HE DID, HOWEVER, THINK THAT THERE WAS A CHANCE THAT
23 IT COULD BE A RHEUMATOID ARTHRITIS, CHILDHOOD RHEUMATOID
24 ARTHRITIS, SOMETHING LIKE THAT, AND HE REFERRED HIM TO DR.
25 DIBARTOLOMEO, WHO WAS A RHEUMATOID ARTHRITIS SPECIALIST.

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1 Q AND IT LOOKS LIKE TREVOR WENT TO SEE DR.
2 DIBARTOLOMEO, UP IN MORGANTOWN AGAIN, ON JUNE 12TH.

3 A YES.

4 Q DOES THAT SOUND ABOUT RIGHT TO YOU?

5 A UH-HUH.

6 Q AND DURING THAT EXAMINATION, IT LOOKS LIKE FROM THE
7 MEDICAL RECORDS THAT TREVOR MAY HAVE ACTUALLY BEEN EXAMINED
8 BY JENNIFER DIFAZIO, A PHYSICIAN'S ASSISTANT?

9 A YES.

10 Q DID DR. DIBARTOLOMEO ALSO EXAMINE HIM?

11 A YES.

12 Q SO YOU SAW TWO PEOPLE THERE DURING THAT VISIT?

13 A I REMEMBER HER. SHE LOOKS A LOT LIKE MY COUSIN, SO
14 I REMEMBER TALKING TO HER NOW.

15 Q AT THAT POINT, DURING THAT ACTUAL VISIT ON JUNE
16 12TH, WHAT WAS TREVOR'S CONDITION LIKE?

17 A I REMEMBER HE WAS A LITTLE BIT CRANKY. WE HAD
18 GIVEN HIM SOME MEDICATION ON THE WAY THERE. BECAUSE IT WAS
19 SUCH A LONG DRIVE, HE HAD AN EPISODE ON THE WAY THERE. BY
20 THE TIME WE GOT THERE, THE MOTRIN HAD STARTED WORKING AND HAD
21 BEEN FOR A WHILE. WHEN WE TOOK HIM IN THE DOCTOR'S OFFICE,
22 WE CARRIED HIM, BUT ACTUALLY WHEN DR. DIBARTOLOMEO EXAMINED
23 HIM, I REMEMBER THAT HE DID WALK FOR THE DOCTOR A FEW STEPS.

24 Q SO WAS HE NOT ABLE TO WALK AT THE TIME YOU CARRIED
25 HIM IN, AND THEN LATER ON IN THE VISIT HE COULD WALK?

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1 A AT THAT POINT, I'M NOT SURE. HE WAS STILL CRYING
2 AND SAYING THAT HE HURT, SO WE JUST DIDN'T PUT HIM DOWN.

3 Q WHAT DID DR. DIBARTOLOMEO OR JENNIFER DIFAZIO TELL
4 YOU THEY THOUGHT THE PROBLEM WAS?

5 A HE SAID THAT IT ACTUALLY COULD HAVE BEEN RHEUMATOID
6 ARTHRITIS, BUT THERE WAS MORE TESTING THAT NEEDED TO BE DONE.
7 HE TRIED TO SCHEDULE TREVOR WITH SOME TYPE OF AN EYE
8 SPECIALIST, BECAUSE HE SAID YOU COULD LOOK -- THERE WAS A
9 CERTAIN TYPE OF EXAMINATION WHERE YOU COULD LOOK BEHIND THE
10 EYES AND SEE IF HE WAS POSITIVE FOR RHEUMATOID ARTHRITIS,
11 WITHOUT HAVING TO DO ANYTHING ELSE, THAT THAT WAS THE NUMBER
12 ONE PROTOCOL, IS WHAT HE CALLED IT, THAT YOU DO.

13 HE COULDN'T GET HIM SCHEDULED THERE, SO HE ASKED ME
14 WOULD I BE WILLING TO BRING HIM BACK TO BECKLEY, WHICH IS
15 KIND OF MID WAY BETWEEN THERE, I GUESS, AND HE COULD HAVE
16 SCHEDULED HIM THERE. I DON'T REMEMBER WHAT THAT DOCTOR'S
17 NAME WAS THAT HE WANTED TO TRY TO SCHEDULE HIM WITH.

18 I CAME BACK HOME. WE CALLED THE DOCTOR THAT HE
19 GAVE ME THE NUMBER FOR TO SCHEDULE HIM. HE ACTUALLY HAD AN
20 APPOINTMENT WITH THAT DOCTOR, BUT BEFORE THAT TIME HE STARTED
21 HAVING MORE EPISODES, MORE SEVERE PAIN, AND BY THAT TIME WE
22 WERE GIVING HIM A LOT OF MOTRIN. HE TOLD ME TO KEEP WATCH
23 FOR THE SIGNS AND SYMPTOMS OF REYES SYNDROME BECAUSE WE WERE
24 GIVING HIM SO MUCH MOTRIN.

25 AND WHENEVER I SAW THAT IT WAS GOING TO TAKE

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1 AWHILE, I CALLED THE DOCTOR BACK, TOLD HIM THAT TREVOR WAS
2 HAVING MORE EPISODES, THEY WERE MORE SEVERE, AND HE ASKED ME
3 COULD I HAVE HIM UP THERE THE NEXT MORNING, BECAUSE IT WAS
4 LATE IN THE AFTERNOON. HE SAID "I DON'T WANT YOU TRAVELING
5 AT NIGHT, SO, IF YOU DON'T CARE, COULD YOU BRING HIM IN FIRST
6 THING IN THE MORNING."

7 Q AND THAT WOULD HAVE BEEN RIGHT AROUND THE 20TH OF
8 JUNE? BECAUSE THAT'S WHEN HIS NEXT HOSPITAL ADMISSION
9 STARTS.

10 A YEAH. IT WAS RIGHT BEFORE HIS -- ACTUALLY, AT THAT
11 VISIT WAS WHEN -- DR. DIBARTOLOMEO WAS THE ONE THAT HAD HIM
12 ADMITTED TO THE HOSPITAL FOR DIFFERENT TESTING. HE SAID THAT
13 IT ACTUALLY DID NOT -- BECAUSE BY THE TIME WE GOT HIM UP
14 THERE, HE WAS TAKING ANOTHER EPISODE, AND HE SAW THE ACTUAL
15 EPISODE, AND HE SAID "THIS IS NOT RHEUMATOID ARTHRITIS.
16 THERE'S SOMETHING ELSE GOING ON. WE'LL ADMIT HIM FOR
17 TESTING." SO HE REFERRED HIM OVER TO THE CHILDREN'S
18 HOSPITAL.

19 Q IT LOOKS LIKE THERE WAS A DR. BURNS WHO ALSO WAS
20 SEEING TREVOR IN THE HOSPITAL DURING THAT TIME?

21 A YES. WHEN DR. DIBARTOLOMEO REFERRED HIM OVER
22 THERE, HE WENT UNDER THE CARE OF DR. BURNS. HE WAS THE CHIEF
23 PEDIATRIC DOCTOR ON THE CHILDREN'S FLOOR. HE HAD OTHER
24 DOCTORS UNDER HIM THAT DID DIFFERENT THINGS, ALSO.

25 Q AND IT LOOKS LIKE A FEW DAYS PASSED, AND THEN THEY

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1 BEST," AND WE JUST DEAL WITH IT AS WE GO ALONG. YOU KNOW, AS
2 PROBLEMS ARISE, THEN THEY'LL, YOU KNOW, TRY TO WORK ON THAT
3 OR WHATEVER.

4 Q OKAY.

5 A LIKE MY HUSBAND STATED ABOUT HIM PICKING AT HIS
6 LEGS AND THINGS, HE SAID THAT THAT WAS THE SENSATION THERE,
7 THAT THERE IS SOME TYPE OF SENSATION, OR HAS TO BE. BECAUSE
8 TREVOR STILL DOESN'T EXPRESS HISSELF. HE CAN ASK HIM
9 "TREVOR, DO YOU FEEL THIS?" AND EVERY NOW AND THEN, YOU
10 KNOW, TREVOR WILL GIVE HIM A STRAIGHT ANSWER, BUT MOST OF THE
11 TIME HE'LL SAY "I DON'T KNOW." BECAUSE I GUESS HE'S AFRAID
12 OF WHAT THEY'LL DO TO HIM IF HE SAYS "YEAH."

13 BUT HE SEEMS TO THINK THAT THAT'S HIS REACTION TO A
14 SENSATION; HE'S JUST FEELING SOMETHING THERE, AND HE'S
15 CURIOUS OF WHAT IT IS, AND MAYBE IT ITCHES OR IT BURNS OR
16 SOMETHING, AND HE'S SCRATCHING IT.

17 Q AND THAT'S JUST ON THIS LEFT LEG, OR IS THAT ON HIS
18 RIGHT LEG THAT HE'S PICKING AT IT?

19 A THE LEFT LEG. I'M TRYING TO THINK WHICH IS LEFT
20 AND RIGHT.

21 Q WELL, IT'S HARD, BECAUSE WHEN YOU'RE LOOKING AT HIM
22 IT'S THE OPPOSITE SIDE.

23 A YEAH.

24 Q NOW, YOUR HUSBAND TOLD US THAT TREVOR'S ABLE TO
25 WALK WITH CRUTCHES OR WITH A WALKER.

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1 A YES.

2 Q IS HE ABLE TO TAKE SOME STEPS ON HIS OWN WITHOUT
3 THOSE?

4 A WELL, HE HOLDS TO THE FURNITURE AND THINGS TO TAKE
5 STEPS.

6 Q KIND OF LIKE WHEN A LITTLE KID IS CRUISING, GOING
7 FROM --

8 A YEAH. BUT ACTUALLY UNSUPPORTED, HE DOESN'T DO
9 ANYTHING UNSUPPORTED.

10 Q AND YOUR HUSBAND MENTIONED THAT HE'S STILL WEARING
11 THE DIAPERS --

12 A YES.

13 Q -- BUT IS ABLE TO TELL YOU WHEN HE NEEDS TO GO
14 SOMETIMES.

15 A HE'S ABLE TO TELL US WHEN HE HAS A DIRTY DIAPER ON.
16 I THINK THAT'S WHAT HE MEANT.

17 Q OKAY.

18 A YEAH, ONCE -- I MEAN EVEN IF IT'S A WET DIAPER,
19 HE'LL LET ME KNOW THAT HIS DIAPER NEEDS CHANGED, BUT HE --
20 THERE'S ONLY BEEN TWO INSTANCES DURING THIS PERIOD THAT HE'S
21 BEEN ABLE TO SAY "MOMMY, I THINK I NEED TO GO TO THE
22 BATHROOM," AND WE CAN GET HIM THERE IN TIME.

23 AND THE QUESTION THAT YOU ASKED EARLIER ABOUT HIM
24 BEING POTTY TRAINED, WE WERE WORKING ON THAT WHENEVER HE
25 FIRST GOT SICK. WE'D BEEN WORKING ON IT ABOUT THREE TO FOUR

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1 WEEKS. HE DIDN'T HAVE IT REALLY DOWN GOOD, BUT HE GOT THE
2 IDEA OF WHAT WAS GOING ON.

3 Q SO YOU'D BEEN WORKING ON IT FOR ABOUT THREE TO FOUR
4 WEEKS BEFORE EASTER, WHEN HE STARTED HAVING THE SYMPTOMS?

5 A YEAH.

6 Q OTHER THAN THE PROBLEMS WITH HAVING TO WEAR THE
7 DIAPER AND NEEDING A WALKER OR CRUTCHES OR USE OF FURNITURE
8 TO SUPPORT HIM WHEN HE'S WALKING, DOES TREVOR HAVE ANY OTHER
9 SYMPTOMS CURRENTLY, ANY OTHER PROBLEMS?

10 A NO. HE'S NOT ON ANY MEDICATIONS. HE DOESN'T
11 REQUIRE ANYTHING OTHER THAN THE DIAPERS AND, YOU KNOW, LIKE
12 ASSISTANCE AT SCHOOL WITH HIS TRAYS AND STUFF LIKE THAT. BUT
13 OTHER THAN THAT, NO.

14 Q DO YOU GUYS HAVE TO HAVE ANYBODY COME IN AND HELP
15 YOU WITH ANYTHING IN THE HOUSE BECAUSE OF HIS LIMITATIONS?

16 A NO, NOT ON A REGULAR BASIS. YOU KNOW, MY MOM, SHE
17 HELPS ME, BECAUSE MY HUSBAND WORKS SO LATE OF THE AFTERNOONS.
18 SHE'LL COME TO THE HOUSE AND, YOU KNOW, HELP ME WITH HIM ONCE
19 HE GETS AWAY FROM SCHOOL, BECAUSE HE'S REALLY TIRED ONCE HE
20 GETS HOME FROM SCHOOL, SO HE DOESN'T HELP WITH ANY OF HIS
21 UNDRESSING. HE ACTUALLY DOESN'T HELP THAT MUCH WITH THE
22 DRESSING PART. HE CAN PUT HIS SHIRT AND HIS COAT ON, BUT
23 HE'S NOT STABLE ENOUGH TO BEND OVER AND PUT HIS SOCKS AND
24 THINGS ON. THAT'S SOMETHING WE'RE WORKING ON. THEY STARTED
25 WORKING ON IT WHEN HE WAS IN THE REHAB, AND WE'RE CONTINUING

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1 HE MADE A SUGGESTION, BUT HE TOLD ME HE WOULD TELL
2 ME WHEN TO DO IT, OF MAKING A DAILY JOURNAL OF TREVOR'S
3 ACTIVITIES DURING THE DAY, AND THEN MAYBE DOING LIKE A HOME
4 MOVIE OF HIM TODAY, WAIT FIFTEEN DAYS, DO ANOTHER HOME MOVIE,
5 HE SAID, AND BRING IT TO HIM FOR HIM TO ANALYZE AND SEE IF HE
6 SAW ANY CHANGES OR ANY WEAKNESS, BECAUSE MAYBE I MIGHT NOT
7 WANT TO SEE A CHANGE, AND I MIGHT NOT CATCH IT, AND HE'D
8 RATHER THAT HE GET TO LOOK AT IT.

9 BUT HE SAID THAT WE'D DISCUSS THAT THIS TIME. HE
10 GOES BACK JANUARY THE 30TH FOR HIS MRI AND THEN FEBRUARY THE
11 5TH FOR THE RESULTS.

12 MS. MCELHINNY: THOSE ARE ALL THE QUESTIONS I HAVE
13 FOR YOU.

14 THE WITNESS: OKAY.

15 MS. MCELHINNY: THESE OTHER FOLKS MAY HAVE SOME
16 QUESTIONS.

17 MR. HORN: MRS. KENNEDY, AS YOU WERE SITTING IN THE
18 OTHER DEPOSITION, YOU KNOW I'M STEVE HORN, AND I REPRESENT
19 COMMUNITY HEALTH FOUNDATION IN THIS CASE.

20 AND I KNOW THAT'S WHERE YOUR SISTER WORKS.

21 THE WITNESS: WELL, SHE USED TO.

22 MR. HORN: SHE USED TO.

23 THE WITNESS: YEAH. SHE WORKS FOR THE MUSCARI
24 FAMILY HEALTH CARE THAT WE DISCUSSED EARLIER.

25 MR. HORN: BECAUSE A FEW YEARS AGO SHE HELPED ME IN

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1 A CASE, SO I KNOW YOUR SISTER, NOW THAT I'VE PUT THAT JERRI
2 BAILEY WITH THE ONE AT COMMUNITY HEALTH TOGETHER.

3 THE WITNESS: I REMEMBER. I REMEMBER. SHE WAS
4 SCARED TO DEATH.

5 MR. HORN: I KNOW SHE WAS. SHE HAD TO COME AND
6 TESTIFY.

7 THE WITNESS: SHE GOT A SUBPOENA OR SOMETHING.

8 MR. HORN: SHE HAD TO COME TESTIFY. THAT'S EXACTLY
9 RIGHT. SHE WAS WHITE-KNUCKLED FOR DAYS ABOUT THAT.

10 THE WITNESS: OH, YES. SHE JUST HAD A BABY. SHE'S
11 REALLY TICKLED WITH THAT BABY, SO SHE'S NOT WORKING RIGHT
12 NOW.

13 MR. HORN: GOOD.

14 I'VE GOT A COUPLE RANDOM QUESTIONS TO START WITH.

15 EXAMINATION

16 BY MR. HORN:

17 Q YOUR HUSBAND DESCRIBED -- AND I WANT TO GET YOUR
18 IMPRESSION OF IT -- THAT THE PARALYSIS ON TREVOR WAS -- HE
19 INDICATED. HE DIDN'T TELL US; HE INDICATED WITH HIS HAND
20 SORT OF RIGHT AROUND THE BOTTOM OF THE RIB CAGE. IS THAT
21 ABOUT WHERE YOU THINK IT IS, OR SOMEPLACE ELSE?

22 A WELL, AT FIRST, WHEN HE FIRST CAME OUT OF SURGERY,
23 THEY SAID IT WOULD TAKE A FEW DAYS FOR EVERYTHING TO START
24 HEALING BACK. THE FIRST DAY THAT HE CAME OUT OF SURGERY, HE
25 WAS MOSTLY ASLEEP ALL THAT DAY. THE NEXT DAY HE COULD MOVE

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1 HIS FINGERS. THEN THE NEXT DAY GOT A LITTLE BIT BETTER, AND
2 HE COULD MOVE HIS ARMS AND HIS HANDS.

3 BUT WHEN WE FINALLY TOOK HIM OUT OF THE REHAB, THE
4 PARALYSIS WAS FROM THE CHEST AREA, THEY CALLED IT FROM HIS
5 NIPPLES DOWN. SINCE THEN, HE DOES HAVE SENSATION IN HIS
6 STOMACH AREA. THE DOCTOR DID SOME KIND OF A TEST TO WHERE
7 HIS MUSCLES ROLL IN HIS STOMACH OR SOMETHING TO WHERE HE CAN
8 TELL WHERE HE FEELS SENSATION AND HE SAYS HE DOES FEEL
9 SENSATION. HE'S NOT SURE IF HE HAS THE ACTUAL FEELING, BUT
10 HE KNOWS HE DOES HAVE SENSATION FROM THE CHEST AREA DOWN TO
11 THE STOMACH AREA, BUT HE'S NOT SURE IF THE PARALYSIS STILL
12 GOES UP THAT FAR OR NOT, BUT THAT IS ORIGINALLY WHERE THE
13 PARALYSIS WAS FROM.

14 Q DOES HE HAVE FULL USE AND RANGE OF MOTION OF HIS
15 ARMS AND HANDS AND EVERYTHING?

16 A YES.

17 Q SO NO ADVERSE EFFECT THERE AT ALL?

18 A NO, NOT WITH THE HANDS/ARMS. AND EVEN, LIKE MY
19 HUSBAND DISCUSSED, RIGHT NOW HE USES HIS HEAD GOOD. THEY
20 JUST SAID THAT LATER ON, YOU KNOW, THEY'D PROBABLY HAVE TO
21 PUT THE PLATE THERE BECAUSE OF THE DETERIORATION OF THE SPINE
22 WHERE THEY HAD TO TAKE THE BONES OUT AND DO THE OPERATION AND
23 THEN PUT THEM BACK.

24 BUT AS OF RIGHT NOW, FROM THE CHEST UP, HE'S FULLY
25 FUNCTIONAL.

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1 TEST FOR THE ARTHRITIS," HE SAID "I WILL." SO HE WENT AHEAD
2 AND DID THAT, I GUESS AS A FAVOR TO ME AND HER, BECAUSE WE
3 HAD DISCUSSED IT WITH HIM TO SEE WHAT HIS IDEAS WERE, BECAUSE
4 HE WAS -- DR. RALLOS WAS ACTUALLY MY PEDIATRICIAN AND, YOU
5 KNOW, WE'VE JUST KNOWN HIM FOR QUITE SOME TIME AND FELT
6 COMFORTABLE TALKING WITH HIM.

7 Q LET ME FOCUS BACK ON THE VISIT TO THE MAN FACILITY
8 ON THE 25TH OF APRIL. WHAT DO YOU REMEMBER ABOUT THAT VISIT?

9 A I REMEMBER TAKING TREVOR THERE. DR. TORDILLA WAS
10 BUSY WITH ANOTHER PATIENT, SO TREVOR SAW THE PHYSICIAN'S
11 ASSISTANT, MR. COOK. I PRESENTED THE PROBLEMS ABOUT HIM
12 HAVING THE PAIN AND STAYING STIFF AND HUNCHED OVER AND THINGS
13 AND RUNNING THE FEVER.

14 DR. COOK THEN LEFT THE ROOM, TALKED WITH DR.
15 TORDILLA. HE CAME BACK IN, WAS TRYING TO EXPLAIN TO ME WHAT
16 THE SYNOVITIS WAS, IF I'M SAYING THAT RIGHT; I THINK I AM. I
17 TOLD HIM, I SAID "WELL, I DON'T UNDERSTAND. HE'S NOT HAD A
18 RESPIRATORY INFECTION. HOW COULD THIS HAPPEN?"

19 I SAID "BECAUSE HE SAID IT WAS THE RESIDUAL
20 INFECTION FROM THE RESPIRATORY INFECTION THAT SET UP IN THE
21 JOINTS, THAT IT JUST MOVED TO A DIFFERENT AREA." AND I TOLD
22 HIM, I SAID "HE'S NOT PRESENTED -- YOU KNOW, I'VE NOT BROUGHT
23 HIM HERE AND TOLD YOU, YOU KNOW, HE WAS HAVING A RESPIRATORY
24 INFECTION," BECAUSE WHERE HE DID HAVE THE ASTHMA, I WOULD
25 HAVE KNOWN. YOU KNOW, I WOULD HAVE HAD TO TAKE HIM, BECAUSE

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1 THERE WAS NO WAY OF GETTING AROUND IT. HE ALWAYS TOOK AN
2 ASTHMA ATTACK, AND I HAD TO TAKE HIM.

3 I TOLD HIM, I SAID "HE'S NOT HAD ANY RESPIRATORY
4 INFECTIONS, ANYTHING LIKE THAT. WHY WOULD HE STILL HAVE
5 THIS? WOULD IT LAY IN HIS SYSTEM THAT LONG? WOULD THE
6 INFECTION BE THERE WITHOUT ME KNOWING IT FOR THAT LONG?"

7 AND DR. COOK SAID "I DON'T KNOW. I JUST PRESENTED
8 YOUR CASE TO DR. TORDILLA, AND HE SAID THAT THAT'S WHAT IT
9 SOUNDS LIKE."

10 SO HE WENT OUT AND GOT DR. TORDILLA. HE CAME IN
11 AND EXPLAINED IT TO ME, ALSO. AND THEN FROM THERE HE ASKED
12 ME TO BRING HIM BACK FOR SOME TESTING. I'M NOT SURE IF WE
13 DID X-RAYS THERE OR NOT. I KNOW DEFINITELY WE DID AT CAMC,
14 BUT I'M NOT SURE IF WE DID FOR DR. TORDILLA. I KNOW WE DID
15 BLOOD WORK, BUT I'M NOT SURE IF X-RAYS.

16 BUT DR. TORDILLA SAID JUST TO, YOU KNOW, LOOK AT
17 IT, HE WOULD GO AHEAD AND DO THE BLOOD TEST. I'M NOT SURE IF
18 X-RAYS, BUT I KNOW HE DID BLOOD TESTS. SO I TOOK HIM BACK
19 THE NEXT DAY FOR BLOOD TESTS. THEY CALLED ME AT HOME, TOLD
20 ME THAT THE RESULTS OF THE BLOOD TEST WAS OKAY, EVERYTHING
21 LOOKED FINE, AND THAT DR. TORDILLA -- IT WAS DR. COOK THAT
22 CALLED ME, SAID THAT DR. TORDILLA WAS STILL IN AGREEMENT THAT
23 IT WAS THE SYNOVITIS AND THAT IT WOULD LAST SEVEN TO TEN
24 DAYS. HE WOULD HAVE THE PAIN; IT WAS JUST SOMETHING I NEEDED
25 TO KEEP GIVING HIM THE MOTRIN TO KEEP HIM COMFORTABLE,

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1 BECAUSE THERE WAS NO MEDICINE YOU COULD GIVE HIM FOR IT, THAT
2 IT WAS JOINT PAIN.

3 Q IF THE RECORDS FROM THE COMMUNITY HEALTH FOUNDATION
4 SHOW THAT X-RAYS WERE TAKEN OF HIS LEGS AND HIPS, IS THAT
5 SOMETHING THAT YOU REMEMBER?

6 A I DON'T REMEMBER, BECAUSE IT'S BEEN QUITE AWHILE.
7 LIKE I SAY, I DO REMEMBER THE ONE AT CAMC, BECAUSE HE WAS
8 PITCHING JUST A REALLY BAD FIT, AND THE LADY TOLD ME, SHE
9 SAID "YOU'RE GOING TO HAVE TO DO SOMETHING WITH HIM, BECAUSE
10 I CAN'T TAKE X-RAYS AND HIM MOVING AROUND."

11 I DO REMEMBER THAT, BECAUSE I GOT ANGRY AT THE
12 LADY, BUT I DON'T REMEMBER ANYTHING ABOUT DOWN THERE.

13 Q AND IT WAS MR. COOK THAT CALLED YOU THE NEXT DAY?

14 A YEAH. HE JUST SAID THAT AFTER LOOKING AT THE BLOOD
15 TESTS THAT DR. TORDILLA, YOU KNOW, HAD AGREED WITH HIS
16 ORIGINAL DIAGNOSIS OF THE SYNOVITIS AND JUST TO GIVE IT A FEW
17 DAYS TO PASS ITS COURSE AND JUST KEEP HIM COMFORTABLE WITH
18 THE MOTRIN AND THINGS.

19 Q DID MR. COOK OR DR. TORDILLA GIVE YOU ANY RETURN
20 APPOINTMENT DATES OR COME-BACK, OR, YOU KNOW, "IF YOU HAVE
21 ANY PROBLEMS, COME BACK AND SEE US AGAIN"?

22 A THEY DIDN'T SET AN APPOINTMENT. HE JUST TOLD ME,
23 HE SAID "WELL," HE SAID "THE DOCTOR SAID IT WILL LAST BETWEEN
24 SEVEN TO TEN DAYS, POSSIBLY A LITTLE BIT LONGER." HE SAID
25 "IF IT DOESN'T CLEAR ITSELF UP," HE SAID "THEN YOU'LL

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1 PROBABLY HAVE TO BRING HIM BACK," BUT HE DIDN'T SET ME AN
2 APPOINTMENT OR ANYTHING AT THAT POINT IN TIME.

3 Q WAS THAT THE FIRST TIME THAT -- WHEN I SAY "YOU," I
4 MEAN YOU AND TREVOR HAD SEEN MR. COOK, THE PHYSICIAN'S
5 ASSISTANT?

6 A I DON'T THINK SO, BECAUSE HE HAD BEEN WORKING THERE
7 FOR A LITTLE WHILE, AND SINCE THAT WAS TREVOR'S REGULAR
8 PEDIATRICIAN, I THINK THAT WE HAD SAW HIM A FEW TIMES
9 EARLIER.

10 Q HE WASN'T A STRANGER TO YOU WHEN YOU CAME IN THAT
11 DAY?

12 A NO. NO. I KNEW HIM, YOU KNOW, FROM BEING DOWN
13 THERE AND THINGS. I'D SEEN HIM IN THE CLINIC, AND HE, YOU
14 KNOW, TALKED TO TREVOR AND THINGS. BUT I SEEM TO REMEMBER
15 THAT I THINK HE HAD SEEN TREVOR A FEW TIMES FOR THE ASTHMA.

16 Q NOW, PRIOR TO APRIL 25TH, 2000, DID YOU HAVE ANY
17 CONCERNS ABOUT THE QUALITY OF THE CARE THAT EITHER MR. COOK
18 OR DR. TORDILLA WAS GIVING YOU AND TREVOR?

19 A I DON'T REMEMBER ANYTHING THAT I HAD QUESTIONED HIM
20 ABOUT, EXCEPT FOR I HAD -- WHEN TREVOR WAS SMALL, YOU KNOW
21 FIRST NEWBORN, I GUESS HE ASSUMED THAT I WAS INEXPERIENCED OR
22 SOMETHING, HE DIDN'T KNOW I HAD A DAUGHTER, AND I HAD A FEW
23 CONCERNS ABOUT HIS EATING AND THINGS LIKE THAT. AND HE JUST
24 TOLD ME, HE SAID "OH, YOU'RE JUST A NERVOUS MOMMY."

25 BUT THEN, YOU KNOW, AS FAR AS THE ACTUAL CARE, I

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1 AND THEN "HE SAID HE THINKS TREVOR IS SUFFERING FROM
2 SYNOVITIS."

3 A THAT WAS DR. COOK THAT TALKED ABOUT THE SYNOVITIS,
4 AND THEN THAT'S WHEN HE, YOU KNOW, GOT THE OPINION OF DR.
5 TORDILLA, ALSO, AND DR. TORDILLA SAID THAT YES, THAT'S WHAT
6 HE THOUGHT IT WAS, BECAUSE OF THE RESULTS OF THE BLOOD WORK
7 SHOWING NOTHING, THAT THAT WAS THE COMMON SYMPTOMS OF
8 SYNOVITIS WAS THE JOINT PAIN.

9 Q AND YOU REPORT "THEY SAY IF THE PAIN PERSISTS, THEY
10 MAY REFER HIM TO A BONE SPECIALIST AT CAMC"?

11 A YEAH.

12 Q AND THAT WAS A DISCUSSION THAT YOU AND MR. COOK
13 HAD?

14 A ME AND MR. COOK, YEAH.

15 Q AND THEN THE NEXT ENTRY IS APRIL 27TH, 2000. YOU
16 REPORT THAT YOU BECAME "VERY WORRIED AND CONSULT A FRIEND
17 THAT IS A PHYSICIAN ASSISTANT"?

18 A UH-HUH.

19 Q IS THAT YOUR SISTER?

20 A YEAH.

21 Q "SHE STATES THAT SHE HAS NO IDEA WHAT IS WRONG AND
22 CONSULTS A PEDIATRICIAN WHO SUGGESTS THAT IT MAY POSSIBLY BE
23 RHEUMATOID ARTHRITIS." AND WHO WAS THE PEDIATRICIAN?

24 A THAT WAS DR. RALLOS.

25 Q DR. RALLOS?

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1 A YES.

2 AND THE PHYSICIAN ASSISTANT WAS MS. HAMRICK.

3 Q OH, IT WAS MS. HAMRICK?

4 A YEAH. LEONA HAMRICK. THAT WAS AT THE GILBERT
5 OFFICE.

6 Q OKAY. I'M SORRY. I WAS CONFUSED. I THOUGHT THE
7 PHYSICIAN ASSISTANT YOU WERE REFERRING TO WAS YOUR SISTER.

8 A SHE'S AN LPN. MY HUSBAND STATED EARLIER SHE'S AN
9 R.N., BUT SHE'S AN LPN.

10 Q I KNEW THAT.

11 SO YOU SPOKE WITH HER ON THE PHONE?

12 A NO. THAT WAS THE DAY THAT I ACTUALLY STOPPED BACK
13 THERE.

14 Q OKAY. YOU STOPPED AT THE GILBERT FACILITY OF CHF?

15 A YEAH. WE'RE IN THE AREA A LOT. I JUST STOPPED
16 THERE AND -- WE WERE GOING TO LUNCH. ME AND MY SISTER WERE
17 GOING TO LUNCH, AND WE GOT TO TALKING ABOUT IT, AND THEN
18 THAT'S WHEN SHE ASKED -- BECAUSE SHE SAID THAT WHERE SHE WAS
19 THE PHYSICIAN'S ASSISTANT, WHERE MS. HAMRICK WAS THE
20 PHYSICIAN'S ASSISTANT, THAT SHE WOULD HAVE TO GET DR. RALLOS
21 TO WRITE THE ORDER FOR THE RHEUMATOID ARTHRITIS TEST, SO DR.
22 RALLOS OKAYED THAT; HE SAID HE WOULD DO IT.

23 Q NOW, WE'VE GOT -- YOUR APRIL 27TH, 2000 ENTRY SAYS
24 "I BECAME VERY WORRIED . . ." WHAT WAS -- WHAT TRIGGERED
25 YOUR -- RAISED YOUR LEVEL OF WORRY ON THAT DAY?

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1 A BECAUSE HE HAD HAD AN EPISODE THAT MORNING, AND IT
2 SEEMED TO BE GETTING A LITTLE BIT WORSE. IT LASTED JUST A
3 LITTLE BIT LONGER, YOU KNOW, LIKE I SAID, BETWEEN THE THIRTY
4 AND FORTY-FIVE MINUTES. BUT THAT TIME IT HAD ACTUALLY GOT UP
5 TO THE FORTY-FIVE MINUTES, YOU KNOW, A LITTLE BIT LONGER, AND
6 IT JUST WORRIED ME, BECAUSE HE JUST SCREAMED REALLY BAD. AND
7 I THOUGHT THERE WAS SOMETHING THAT I WAS MISSING. IT MADE ME
8 THINK THAT -- IT ACTUALLY DID MAKE ME THINK "AM I REALLY
9 DOING WHAT I'M SUPPOSED TO BE DOING? AM I THE MOTHER THAT
10 I'M SUPPOSED TO BE," YOU KNOW, BECAUSE I COULDN'T FIGURE OUT
11 WHAT WAS WRONG WITH HIM, AND HE WAS JUST CRYING A LOT, SAYING
12 THAT HE HURT, AND I DIDN'T KNOW WHAT TO DO.

13 Q IS THERE SOME REASON -- I KNOW YOU WERE GOING TO
14 LUNCH WITH YOUR SISTER. IS THERE SOME REASON YOU DIDN'T TAKE
15 TREVOR BACK TO MR. COOK OR DR. TORDILLA, AS OPPOSED TO JUST
16 SPEAKING WITH MS. HAMRICK?

17 A WELL, THAT WAS WHEN THEY TOLD ME, YOU KNOW, THAT I
18 JUST NEEDED TO BE PATIENT. HE TOLD ME THEN I WAS JUST A
19 WORRIED MOMMY AND THAT HE KNEW THAT I HURT WHEN THE BABY
20 HURT, BUT IT WAS JUST SOMETHING THAT I'D HAVE TO BE PATIENT
21 WITH AND LET IT PASS, THAT IT WOULD PASS IN SEVEN TO TEN DAYS
22 OR SO. SO I WAS KIND OF JUST RELYING ON HIM AND HOPING, YOU
23 KNOW, THAT I WAS DOING THE RIGHT THINGS, THAT I WAS KEEPING
24 HIM COMFORTABLE AND DOING WHAT I COULD.

25 Q I GUESS FOR PURE CONVENIENCE'S SAKE, YOU WERE

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1 HAVING LUNCH WITH YOUR SISTER, MS. HAMRICK WAS THERE --

2 A YEAH.

3 Q -- SO YOU JUST THOUGHT "LET'S RUN IT BY THEM AND
4 SEE WHAT THEY SAY"?

5 A YEAH. WE JUST ACTUALLY WERE THERE AT THE GILBERT
6 CLINIC, IN THE BACK KITCHEN THERE, AND, YOU KNOW, WE JUST
7 STARTED DISCUSSING IT.

8 Q AND THE POINT OF MY QUESTION WAS I WAS TRYING TO
9 FIND OUT IF YOU WERE DISSATISFIED WITH MR. COOK OR DR.
10 TORDILLA AT THAT POINT AND THAT'S WHY YOU DIDN'T GO BACK TO
11 THEM WITH THIS MOST RECENT EPISODE.

12 A YEAH. SHE JUST SAW THAT I WAS FRUSTRATED, YOU
13 KNOW, ABOUT ME NOT BEING ABLE TO TAKE CARE OF THE PAIN AND
14 STUFF. AND, YOU KNOW, ME AND HER WERE FRIENDS, TOO, MS.
15 HAMRICK, AND WE WERE JUST DISCUSSING IT CASUALLY OVER LUNCH.

16 Q AND SHE, I TAKE IT, WENT BACK AND TALKED TO
17 DOCTOR -- "SHE" BEING MS. HAMRICK -- WENT BACK TO DR. RALLOS
18 AND SAID "WE'D LIKE TO GET TREVOR A RHEUMATOID ARTHRITIS
19 BLOOD TEST"?

20 A YES.

21 Q HE SAID "FINE"?

22 A SHE SAID "WOULD YOU OKAY THAT? WOULD YOU LET ME
23 ORDER THAT?" AND HE SAID "YEAH, I'LL DO IT." BECAUSE SHE
24 HAS TO GET -- WHERE SHE'S UNDER HIM OR SOMETHING, HE HAD TO
25 --

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1 Q HE HAD TO AUTHORIZE IT AND SIGN IT --

2 A -- HE HAD TO OKAY IT.

3 Q -- OR WHATEVER THE PAPERWORK WAS?

4 A YEAH. THERE'S SOME TYPE OF REASON THAT SHE HAD TO
5 GET DR. RALLOS' OKAY, AND HE OKAYED IT, SO THEY WENT AHEAD
6 AND DID THE BLOOD WORK.

7 Q WHERE DID THEY ACTUALLY -- DID THEY DRAW THE BLOOD
8 THERE AT THE FACILITY IN GILBERT?

9 A YES. AT THE GILBERT FACILITY.

10 Q AND THEN --

11 A AND THE RESULTS CAME BACK THERE, ALSO.

12 Q DO YOU REMEMBER ABOUT HOW LONG IT WAS UNTIL YOU GOT
13 THE BLOOD TEST RESULTS BACK?

14 A NO.

15 Q I MEAN IT WASN'T THE SAME DAY?

16 A NO. I'M SURE IT PROBABLY WOULDN'T HAVE BEEN THE
17 SAME DAY.

18 Q AND THE REASON I ASK, BECAUSE --

19 A BECAUSE I PUT ON THERE --

20 Q -- YOUR LAST SENTENCE WAS --

21 A YEAH.

22 Q -- "THE BLOOD TEST IS NEGATIVE," AND IT GIVES THE
23 IMPRESSION THAT THEY TOOK THE BLOOD THAT DAY AND GOT THE
24 RESULTS BACK THAT SAME DAY.

25 A YEAH. IT WOULD HAVE PROBABLY BEEN THE NEXT DAY OR

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1 SO, BECAUSE I KNOW THEY HAVE TO SHIP THEIR BLOOD OUT. MY
2 SISTER WAS IN CHARGE OF THAT OVER THERE, AND THEY HAVE TO
3 SHIP THEIR BLOOD OUT TO BE TESTED.

4 Q IT'S ON THE LAB SLIP. I'M NOT TRYING TO TRICK YOU
5 OR ANYTHING.

6 A YEAH. THAT'S OKAY.

7 Q I JUST WONDERED IF THERE WAS SOMETHING ELSE THAT I
8 DIDN'T KNOW ABOUT THAT YOU KNEW ABOUT.

9 A IT'S JUST BEEN AWHILE.

10 Q AND ON APRIL 30TH, THAT'S THE SUNDAY MORNING
11 EPISODE THAT WE SPOKE ABOUT EARLIER?

12 A YEAH. UH-HUH.

13 Q AND THEN THE NEXT ENTRY IS MAY 1ST. YOU REPORT
14 THAT "TREVOR IS NOT GETTING ANY BETTER . . . I KEEP CALLING
15 THE DOCTOR . . ." AND WHO WAS IT YOU WERE CALLING?

16 A THAT WOULD HAVE BEEN DR. TORDILLA, THE REGULAR
17 PEDIATRICIAN. BECAUSE WHEN THEY DISCHARGED HIM FROM THE
18 CAMC, HE TOLD ME THAT HE AGREED WITH THE TREATING
19 PEDIATRICIAN AND THAT I NEEDED TO GO AHEAD AND EXPRESS MY
20 CONCERNS TO HIM.

21 Q AND YOU REPORT THAT DR. TORDILLA SAYS HE DOESN'T
22 KNOW WHAT IS WRONG AND IT SHOULD PASS IN A FEW DAYS?

23 A YEAH. HE DIDN'T UNDERSTAND WHY IT HADN'T ALREADY
24 CLEARED ITSELF UP.

25 Q AND WAS THAT THE TIME OR WAS IT PRIOR TO THAT THAT

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1 Q THAT'S OKAY.

2 SO YOU CALLED MS. HAMRICK AGAIN AND ASKED HER A
3 FAVOR?

4 A MS. HAMRICK, UH-HUH.

5 Q AND SHE'S THE ONE THAT --

6 A GOT THE REFERRAL TO WVU FOR ME.

7 Q AND, I TAKE IT, SINCE IT'S A REFERRAL, SHE HAD TO
8 GO BACK TO RALLOS AND SAY --

9 A I ASSUME. LIKE I SAY, I JUST TALKED TO HER ON THE
10 TELEPHONE, AND THEN SHE SAID THAT SHE WOULD TAKE CARE OF
11 EVERYTHING FOR ME, AND WHEN MY SISTER CAME HOME THAT EVENING
12 SHE HAD THE REFERRAL AND EVERYTHING IN AN ENVELOPE FOR ME TO
13 TAKE WITH ME TO THE VISIT.

14 Q WHAT WAS IN THAT ENVELOPE, IF YOU RECALL?

15 A I KNOW THE RHEUMATOID ARTHRITIS TEST FROM THERE,
16 AND THEN SHE HAD TO CALL THE OTHER CLINIC AND GET THEM TO FAX
17 HIS RECORDS UP THERE, SO BOTH SETS OF MEDICAL RECORDS FROM
18 BOTH CLINICS. I HAD TO GO TO WOMEN AND CHILDREN'S AND GET
19 THAT VISIT, SO I GOT THOSE, YOU KNOW, IN A SEPARATE ENVELOPE.
20 AND THEN THERE WOULD HAVE BEEN THE REFERRAL SLIP AND THE
21 APPOINTMENT SLIP. AND THE REFERRAL SLIP HAD LEONA'S NAME ON
22 IT AS THE REFERRING PHYSICIAN.

23 THEY EVEN -- THEY DIDN'T KNOW WHO SHE WAS WHEN I
24 WENT UP THERE, BECAUSE WHERE SHE'S UNDER DR. RALLOS, THEY
25 MUST HAVE HAD TO BILL EVERYTHING UNDER DR. RALLOS' NAME AS

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1 THE REFERRING PHYSICIAN. THEY HAD PROBLEMS WITH THAT. THEY
2 CALLED BACK TO THE CLINIC AND EVERYTHING ON THE DAY I WENT UP
3 THERE, WANTING TO KNOW "WHO'S LEONA HAMRICK AND WHY IS SHE
4 REFERRING PEOPLE UP HERE IF SHE'S ONLY A PHYSICIAN'S
5 ASSISTANT?"

6 Q BUT FOR WHATEVER REASON --

7 A BUT I WOULD ASSUME THEN THAT THEY SAID "OKAY. DO
8 IT UNDER RALLOS. HE'S OKAYING IT." THAT'S JUST AN
9 ASSUMPTION, THOUGH.

10 Q OR IT COULD HAVE BEEN DR. TORDILLA, WHATEVER?

11 A YEAH. SOMEBODY -- SOME DOCTOR THEN, YOU KNOW,
12 BACKED HER UP, I GUESS --

13 Q SAID "OKAY."

14 Q -- AND SAID "OKAY. DO IT UNDER MY NAME." BUT THEY
15 OKAYED THE REFERRAL.

16 Q SO YOU WERE ABLE TO TAKE TO YOUR VISIT TO DR. JONES
17 IN MORGANTOWN A COPY OF YOUR MEDICAL RECORDS FROM THE GILBERT
18 FACILITY AND THE MAN FACILITY AND ALSO THE MEDICAL RECORDS
19 GENERATED AT CHARLESTON AREA MEDICAL CENTER?

20 A YES.

21 Q AND TOOK THOSE UP TO HIM, AS WELL?

22 A YES.

23 Q DO YOU RECALL HIM GOING OVER THOSE WHEN HE WAS WITH
24 YOU AND TREVOR AT ANY TIME?

25 A YEAH. HE WENT OVER THEM THERE, AND HE JUST KEPT

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1 ASKING SEVERAL DIFFERENT QUESTIONS, AGAIN ABOUT TREVOR'S
2 DAILY ACTIVITIES, "WHAT'S CHANGED?" IS HE DOING THIS MORE
3 OFTEN, IS HE DOING THAT MORE OFTEN, RUNNING, YOU KNOW,
4 JUMPING, THINGS LIKE THAT, OR HAS HE QUIT DOING THIS. AND
5 THEN HE ASKED ABOUT, YOU KNOW, HOW MANY TIMES A DAY HE GOT
6 TIRED, BECAUSE HE ASKED ABOUT HIM BEING TIRED AND STUFF, AND
7 I TOLD HIM THAT HE WAS UP TO TAKING TWO NAPS A DAY.

8 HE JUST ASKED ABOUT HIS DAILY LIFE, YOU KNOW, WHILE
9 HE WAS GOING OVER -- I GUESS, YOU KNOW, ASKING ME QUESTIONS
10 ABOUT WHAT HE WOULD SEE IN THE RECORDS, MY COMPLAINTS OR
11 SOMETHING.

12 Q SAME GENERAL KIND OF QUESTIONS THAT THEY ASKED AT
13 THE COMMUNITY HEALTH FOUNDATION AND AT CAMC ABOUT DAILY
14 ACTIVITIES AND HOW HE'D ACT AND REACT?

15 A DAILY ACTIVITIES, EATING, SLEEPING. I KNOW IT WAS
16 DAILY ACTIVITIES, EATING AND SLEEPING HABITS, AND IF I HAD
17 CHANGED ANYTHING IN HIS ROUTINE OR IN HIS LIFESTYLE.

18 Q YOU ALSO SAID AT THAT TIME DR. JONES GAVE YOU A
19 REFERRAL TO THE RHEUMATOLOGY DEPARTMENT AT WEST VIRGINIA
20 UNIVERSITY HOSPITALS?

21 A YES. BECAUSE AFTER HE REVIEWED THOSE MEDICAL
22 RECORDS, HE SAID IT DIDN'T PRESENT ITSELF AS AN ORTHOPEDIC
23 PROBLEM, BECAUSE OF ME TELLING HIM WHEN HE GOT UP OF THE
24 MORNING, AND HE WAS -- YOU KNOW, SEEMED STIFF OR WHATEVER AND
25 IT TOOK HIM A LITTLE BIT TO GET STARTED, HE SAID THAT SOUNDED

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1 MORE LIKE AN ARTHRITIS, SO THAT'S WHEN HE REFERRED HIM TO THE
2 RHEUMATOID ARTHRITIS FOR TESTING OR EVALUATION.

3 Q AND I TAKE IT DR. JONES ACTUALLY DID A HANDS-ON
4 EXAMINATION OF TREVOR?

5 A YES.

6 Q YOU WERE IN THERE FOR THAT EXAM, I'M SURE?

7 A UH-HUH. YES.

8 Q DID YOU NOTICE HIM DOING -- "HIM" BEING DR. JONES
9 -- DOING ANY DIFFERENT TYPE OF EXAMINATION THAN THAT
10 CONDUCTED BY DR. GREEN OR DR. CURTIS OR MR. COOK?

11 A I DON'T REMEMBER ANYTHING A LOT DIFFERENT. HE DID
12 THE SAME TYPE OF EXAMINATION. HE JUST SPENT A LITTLE BIT
13 MORE TIME, YOU KNOW, WITH US DOING IT, I GUESS TRYING TO
14 FIGURE OUT WHY TREVOR WAS UP THERE.

15 MR. HORN: ONE OF THE THINGS THAT WE'VE GOTTEN IN
16 THE CASE IS YOUR ALL'S ANSWERS TO INTERROGATORIES THAT I,
17 BEING COUNSEL TO THE UNITED STATES, HAD SENT YOU, AND WE GOT
18 A RESPONSE BACK. AND I'LL POSE THIS TO YOUR COUNSEL FIRST.
19 THERE WEREN'T VERIFICATIONS WITH THOSE.

20 MR. HRKO: OKAY.

21 MR. HORN: CAN WE JUST PUT ON THIS RECORD THAT THEY
22 ARE VERIFIED ANSWERS.

23 MR. HRKO: SURE. I'LL GET -- ACTUALLY, WHY DON'T
24 YOU JUST LET ME GO AHEAD AND DO A VERIFICATION.

25 MR. HORN: THAT, OR SHE CAN JUST STIPULATE TO IT ON

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1 POSITIVE," BE COURTEOUS ENOUGH TO TELL ME THAT AND TELL ME "I
2 DON'T KNOW WHAT'S WRONG WITH YOUR CHILD." BECAUSE DR. RALLOS
3 WAS UP FRONT WITH ME. HE TOLD ME "I CAN'T TELL YOU WHAT'S
4 WRONG WITH YOUR CHILD, BECAUSE I'M NOT HIS PEDIATRICIAN. I
5 CAN'T MAKE AN ASSUMPTION WHAT'S WRONG WITH YOUR CHILD, AND I
6 WON'T EVEN BEGIN TO TRY."

7 ALL I EVER ASKED FROM HIM WAS HONESTY. AND, YOU
8 KNOW, IF HE DON'T -- IT'S NOT A BAD THING TO NOT KNOW THE
9 ANSWER. THAT'S WHY YOU'VE GOT AN MRI, THAT'S WHY YOU'VE GOT
10 AN X-RAY, OR THAT'S WHY YOU'VE GOT THE TESTING AVAILABLE TO
11 YOU. AND IF IT'S NOT AVAILABLE TO YOU, SEND MY CHILD WHERE
12 THERE IS THAT TYPE OF TESTING AVAILABLE. I DON'T CARE WHERE
13 IT'S AT.

14 WVU DOES NOT HAVE THE FACILITY TO DO THE
15 CHEMOTHERAPY THAT TREVOR NEEDS IF THE TUMOR DOES COME BACK.
16 I HAVE TO GET ON A PLANE AND TAKE MY CHILD TO CALIFORNIA.
17 BUT I'LL DO THAT, BECAUSE THAT'S MY CHILD. YOU KNOW, I JUST
18 THINK HE SHOULD HAVE GAVE ME THAT COURTESY TO, IF HE DIDN'T
19 KNOW, BE WILLING TO ADMIT "I DON'T KNOW WHAT'S GOING ON.
20 I'LL SEND HIM TO SOMEBODY THAT I THINK MIGHT BE ABLE TO HELP
21 HIM. IF NOT, MAYBE HE CAN GET HIM TO SOMEBODY THAT CAN HELP
22 HIM."

23 Q LET ME ASK YOU THIS. DR. TORDILLA SAID "I THINK
24 IT'S SYNOVITIS AND IT SHOULD GO AWAY IN SEVEN TO TEN DAYS."
25 DO YOU THINK, IN FAIRNESS TO DR. TORDILLA, THAT IF YOU WAITED

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1 THE SEVEN TO TEN DAYS AND CAME BACK TO HIM AND SAID, YOU
2 KNOW, "IT'S THE SAME AND MAYBE JUST A LITTLE BIT WORSE THAN
3 WHAT IT WAS," THAT HE OUGHT HAVE BEEN GIVEN THE BENEFIT OF
4 THE DOUBT AT LEAST FOR SEVEN TO TEN DAYS?

5 A WELL, I STILL HAD NOT -- I MEAN I HAD TALKED TO
6 LEONA ABOUT THE REFERRAL AND THINGS, BUT ACTUALLY I DID NOT
7 ACTUALLY GET THE REFERRAL AND THINGS UNTIL, YOU KNOW, A WEEK
8 OR SO HAD PASSED. AFTER I HAD ALREADY -- HE TOLD ME THAT THE
9 BEST HE COULD DO OR WHAT HE THOUGHT WAS SEND HIM TO CAMC,
10 BECAUSE THEY WERE A CHILDREN'S HOSPITAL. THEY WOULD HAVE A
11 DOCTOR THAT WOULD BE ABLE TO LOOK AT HIM, YOU KNOW, IF IT
12 DIDN'T PASS.

13 SO MY FIRST INSTINCT WAS -- WHEN TREVOR HAD THE
14 EPISODE THAT LASTED FOR SO LONG, MY FIRST IDEA WAS "HE'S NOT
15 OPEN. HE SAID HE WAS GOING TO SEND HIM TO CAMC ANYWAY.
16 THAT'S WHERE I'LL TAKE HIM, BECAUSE HE'S GOT THE CONFIDENCE
17 IN THEM, YOU KNOW, THAT HE THINKS THEY CAN FIND OUT WHAT'S
18 WRONG. SO I'LL JUST KIND OF" -- YOU KNOW.

19 Q YOU DID IT ON YOUR OWN?

20 A "I'LL JUST KIND OF TAKE HIM DOWN THERE, BECAUSE DR.
21 TORDILLA'S OFFICE IS NOT OPEN ANYWAY. I KNOW THEY HAVE AN
22 EMERGENCY ROOM. I'LL TAKE HIM DOWN THERE, AND I'LL GO AHEAD
23 AND GET THE BALL ROLLING," BECAUSE I JUST DIDN'T WANT TO SEE
24 MY CHILD IN PAIN ANYMORE. SO THAT'S WHAT I DID. WHETHER IT
25 WAS RIGHT OR WHETHER IT WAS WRONG, AT THAT POINT IN TIME, AND

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1 WHETHER IT'S LEGALLY RIGHT OR IT'S LEGALLY WRONG, IT WAS
2 RIGHT FOR MY CHILD AT THAT POINT IN TIME.

3 Q I'M NOT ARGUING WITH THAT.

4 A IT'S WHAT I THOUGHT I HAD TO DO TO TAKE CARE OF
5 HIM, BECAUSE WHATEVER I HAD TO DO TO GET HIM THE HELP. I
6 DON'T CARE WHAT IT WAS.

7 Q IF YOU HADN'T HAD THAT EPISODE THAT SUNDAY THAT YOU
8 ACTUALLY WENT TO CAMC, WERE YOU COMFORTABLE IN WAITING SEVEN
9 TO TEN DAYS TO SEE IF IT WORKED ITSELF OUT, LIKE DR. TORDILLA
10 INDICATED TO YOU?

11 A I WOULDN'T SAY COMFORTABLE, BUT I WAS WILLING TO
12 GIVE HIM THE BENEFIT OF THE DOUBT, IF THE EPISODES HADN'T
13 STARTED GETTING MORE SEVERE AND MORE -- YOU KNOW, MORE OFTEN.
14 BY THE TIME THAT I ACTUALLY DID TAKE HIM TO MORGANTOWN, HE
15 WAS HAVING LIKE FOUR OR FIVE EPISODES A DAY, AND THEY WERE
16 VERY -- VERY HARD ON BOTH OF US. BECAUSE I WAS SITTING
17 THERE, YOU KNOW, WITH HIM. MY DAUGHTER WAS AT SCHOOL, MY
18 HUSBAND WAS AT WORK; IT WAS ME AND HIM, AND IT WAS EXTREMELY
19 HARD.

20 BUT I WAS WILLING AND I HAD WAITED, YOU KNOW. FROM
21 THE TIME THAT I SAW, YOU KNOW, DR. TORDILLA AND HAD THE BLOOD
22 TEST AND STUFF DONE, EVEN LOOKING AT THE TIME LINE, IT WAS,
23 WHAT, ABOUT SIX DAYS BEFORE I EVER TOOK HIM TO CAMC.

24 Q IT WAS FIVE DAYS. THE VISIT WAS THE 25TH --

25 A OKAY.

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1 Q -- AND YOU WERE AT CAMC THAT FOLLOWING SUNDAY.

2 A SO HE SAID GIVE HIM SEVEN TO TEN DAYS AND, YOU
3 KNOW, IT GOT WORSE INSTEAD OF BETTER, WHEN I THOUGHT, YOU
4 KNOW, "AS THE DAYS GO BY, IT'S GOING TO GET A LITTLE BIT
5 EASIER, BECAUSE THIS IS GOING TO PASS." AND IN FIVE DAYS IT
6 HADN'T GOT ANY BETTER; IT HAD ACTUALLY GOT WORSE.

7 SO I THOUGHT "WELL, IF I TAKE HIM BACK DOWN THERE,
8 HE'S GOING TO SEND HIM TO CAMC. THEY'RE NOT OPEN TODAY.
9 I'LL JUST TAKE HIM TO CAMC. AND THEN WHENEVER I GET DOWN
10 THERE, IF THEY ADMIT HIM OR WHATEVER THEY DO, I'LL TELL THEM
11 HIS REGULAR PEDIATRICIAN WAS GOING TO SEND HIM DOWN HERE
12 ANYWAY TO HAVE SOMEBODY LOOK AT HIM LATER ON IF THIS DIDN'T
13 CLEAR UP."

14 Q AND I THINK YOU INDICATED THAT'S WHAT MR. COOK HAD
15 TOLD YOU, THAT MAYBE HE'D HAVE TO SEND HIM UP THERE FOR A
16 BONE SCAN?

17 A HE SAID THAT DR. TORDILLA TOLD HIM IF IT DIDN'T
18 CLEAR UP -- SAID "GIVE IT SEVEN TO TEN DAYS, MAYBE A LITTLE
19 BIT LONGER." IF IT DIDN'T CLEAR UP, THEN HE WOULD LOOK AT
20 THE POSSIBILITY OF REFERRING HIM TO CAMC FOR AN ORTHOPEDIC
21 CONSULT.

22 Q WHEN YOU WERE IN MORGANTOWN -- AND WE'VE GONE
23 THROUGH THE DOCTORS. YOU SAW DR. JONES, THE ORTHOPEDIST; YOU
24 SAW DR. DIBARTOLOMEO AND HIS PHYSICIAN'S ASSISTANT, THEY WERE
25 IN THE RHEUMATOLOGY DEPARTMENT, AND YOU SAW HIM ACTUALLY

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1 -- SHE WAS BEING AN AUNT, RATHER THAN A NURSE, AND SHE JUST
2 GOT A LITTLE BIT ANGRY, YOU KNOW, THAT HE DIDN'T CATCH IT OR
3 THAT HE DIDN'T FIND IT OR WHATEVER. I DON'T KNOW IF SHE HAS
4 ANY OPINIONS THAT "HE COULD HAVE DONE THIS" OR "HE COULD HAVE
5 DONE THAT." SHE'S NEVER STATED ANYTHING LIKE THAT TO ME.
6 SHE JUST -- SHE JUST SAYS THINGS LIKE, YOU KNOW, "I DON'T
7 KNOW WHY HE DIDN'T CATCH IT," BECAUSE HE HAD, YOU KNOW,
8 TREATED HIM SINCE HE WAS BORN, OR WHATEVER.

9 BUT TO ACTUALLY SAY THAT "HE MISSED THIS" OR "HE
10 MISSED THAT," YOU KNOW SHE'S NOT SAID ANYTHING LIKE THAT TO
11 ME.

12 Q IS THERE ANYTHING ELSE THAT IS SIGNIFICANT, IN YOUR
13 MIND, ABOUT WHAT TRANSPIRED BY EITHER DR. TORDILLA AND MR.
14 COOK AT THE MAN FACILITY OR DR. RALLOS AND MS. HAMRICK AT THE
15 GILBERT FACILITY THAT I HAVEN'T ASKED YOU ABOUT THAT STANDS
16 OUT IN YOUR MIND THAT'S IMPORTANT OR SIGNIFICANT FOR YOU?

17 MY PURPOSE IN ASKING THAT, I JUST DON'T WANT TO BE
18 A YEAR DOWN THE ROAD SOMEPLACE AND YOU SAY "OH, BUT YOU
19 FORGOT TO ASK ME ABOUT THAT." AND SO I DON'T KNOW -- I WANT
20 TO MAKE SURE I'VE COVERED EVERYTHING THAT YOU THINK IS
21 SIGNIFICANT.

22 A I CAN'T THINK -- I CAN'T THINK OF ANYTHING. I MEAN
23 I KNOW AT THE POINT IN TIME THAT THEY WERE TRYING TO FIND OUT
24 WHAT WAS WRONG WITH TREVOR, EVEN BEFORE LEONA ORDERED THE
25 RHEUMATOID ARTHRITIS TEST, SHE ACTUALLY GOT THE OPINION OF

(PENNY LEA KENNEDY)

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1 ANOTHER TREATING PHYSICIAN, AND THAT'S WHO TOLD HER "WELL,
2 MAYBE" -- YOU KNOW. AND SHE IS A PEDIATRICIAN. IT'S DR.
3 EILEEN CATTERSON IN PINEVILLE. SHE CALLED AND GOT HER
4 OPINION. SHE'S THE ONE THAT TOLD HER, SAID "WELL, THAT KIND
5 OF POSES AS MAYBE AN ARTHRITIS."

6 AND THAT'S WHAT GOT LEONA TO ORDER THE ARTHRITIS
7 TEST. BUT THAT'S KIND OF THE ONLY THING THAT HAPPENED THAT
8 WE'VE NOT DISCUSSED.

9 MR. HORN: I APPRECIATE YOU TELLING ME THAT. AND,
10 YOU KNOW, IF SOMEPLACE DOWN THE ROAD YOU THINK OF SOMETHING
11 ELSE, PLEASE LET YOUR ATTORNEY KNOW, AND HE, IN TURN, CAN LET
12 ME KNOW, AND I'D APPRECIATE THAT.

13 THE WITNESS: OKAY.

14 MR. HORN: I DON'T HAVE ANYTHING FURTHER. THANK
15 YOU.

16 MS. EIFERT: I HAVE SOME QUESTIONS FOR YOU, MRS.
17 KENNEDY.

18 EXAMINATION

19 BY MS. EIFERT:

20 Q WHY DID YOU LEAVE MS. LAMBERT'S EMPLOY?

21 MR. HRKO: I'M GOING TO OBJECT TO THAT AND INFORM
22 HER -- OH, SORRY. I THOUGHT YOU WERE REFERRING TO HER
23 REPRESENTATION IN THIS CASE.

24 MS. EIFERT: NO, HER EMPLOYMENT. SHE WAS EMPLOYED

(PENNY LEA KENNEDY)

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1 THAT WAS A CONVERSATION WITH THE OTHER DOCTOR.

2 HE SAID THAT IT DID PRESENT TO A RHEUMATOID
3 ARTHRITIS PROBLEM TO HIM, AND DR. DIBARTOLOMEO WOULD HAVE TO
4 MAKE ANY OTHER ASSUMPTIONS, BECAUSE HE WAS NOT SPECIALIZED IN
5 THAT FIELD TO BE ABLE TO MAKE THAT ASSUMPTION FOR ME.

6 AND THEN WHEN I WENT TO THE RHEUMATOID ARTHRITIS
7 DOCTOR, DR. DIBARTOLOMEO, THAT'S WHEN HE TOLD ME THAT IT
8 WASN'T NECESSARILY THE BLOOD TEST THAT WOULD TELL THEM,
9 BECAUSE IF IT WAS JUST STARTING, THAT IT MAY NOT HAVE SHOWN
10 UP IN THE BLOODSTREAM, AND THAT'S WHY HE WANTED THE
11 EXAMINATION BEHIND THE EYES.

12 Q AM I CORRECT IN UNDERSTANDING THAT WHAT YOU'RE --
13 AT LEAST IN PART WHAT YOU'RE CRITICAL OF AT CAMC WAS THAT NO
14 MRI WAS DONE?

15 A YES, PART.

16 Q WHAT ARE YOUR OTHER -- WHAT OTHER THINGS ARE YOU
17 UPSET WITH CAMC ABOUT?

18 A ACTUALLY, THAT THEY DIDN'T -- THEY ARE A
19 SPECIALIZED HOSPITAL FOR CHILDREN, AND THAT THEY DIDN'T TAKE
20 THE TIME, JUST AS DR. TORDILLA, THAT HE DIDN'T TAKE THE TIME,
21 AS THE NORMAL TREATING PEDIATRICIAN TO TAKE THAT TIME TO FIND
22 OUT WHAT WAS WRONG, INSTEAD OF JUST -- IN MY OPINION, AND
23 THAT'S ONLY MY OPINION, HE JUST AGREED WITH DR. TORDILLA. HE
24 DID THE BLOOD TEST, AND HE DID AN X-RAY, BUT INSTEAD -- AND
25 THAT WAS -- EVIDENTLY, I MEAN I KNEW THE BLOOD TEST HAD BEEN

Charleston Area
Medical Center
Charleston, West Virginia



USE SPACE BELOW FOR IDENTIFICATION IF NECESSARY

NAME

ROOM NO.

EMERGENCY DEPARTMENT:

- ☐ GENERAL DIVISION -- (304) 348-7498
☐ MEMORIAL DIVISION -- (304) 348-4170
☐ WOMEN & CHILDREN'S HOSPITAL -- (304) 348-2550

EMERGENCY DEPARTMENT AFTERCARE INSTRUCTIONS

- ☐ Keep dressing clean and dry
- ☐ Keep injured part elevated as much as possible for _____ days
- ☐ Ice (intermittently) to injured area for _____ minutes _____ times a day.
- ☐ Heat (intermittently) to injured area for _____ minutes _____ times a day.
- ☐ Aspirin/Tylenol for pain or fever
- ☐ You MAY ☐ MAY NOT
Return to Work or School Today
- ☐ No weight bearing for _____ days
- ☐ Re-Wrap Ace Bandage if too loose or too tight.
- ☐ Crutches as advised (They are sold to you)
- ☐ Take prescription(s) as directed.
- ☐ You have been started on Tetanus Immunization Series today. Please complete the series with your private M.D. or Clinic.
1. 1-2 Months from today -- 1/2 cc Tetanus Toxoid
 2. 6 Months-1 Year from today -- 1/2 cc Tetanus Toxoid
- This will complete your Tetanus Immunization.
- ☐ Be on the alert for signs of possible infection.
- | | |
|----------------|-------------|
| Increased Pain | Fever |
| Redness | Warmth |
| Swelling | Red Streaks |

CONTACT YOUR PHYSICIAN IMMEDIATELY IF THESE OCCUR

IMPORTANT NOTICE:

TREATMENT IN THE EMERGENCY DEPARTMENT IS OFFERED AS EMERGENCY FIRST CARE ONLY. FOLLOW-UP TREATMENT BY A PHYSICIAN MAY BE IMPORTANT FOR YOUR SAFETY. YOU ARE URGED TO FOLLOW CAREFULLY THE INSTRUCTIONS GIVEN ON THIS SHEET.

Date: 4-30-00

Patient's Signature

Patient's Name:

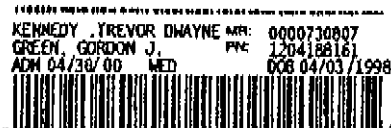
Witness:

White Copy - Chart • Yellow Copy - Patient

17-7392 ITEM 1280

EMERGENCY DEPARTMENT AFTER CARE INSTRUCTIONS

MR Rev. 8-99



Your EKG will be reviewed and if any significant abnormalities are discovered, you may be recalled to the Emergency Department.

Your X-Ray will be interpreted by a radiologist and if any abnormalities are discovered, you may be recalled to the Emergency Department.

OTHER SPECIFIC INSTRUCTIONS:

CALL TO ARRANGE AN APPOINTMENT AT:

- ☐ Children's Medicine Center 348-2525 IN _____ DAYS
☐ Women's Medicine Center 348-2427 IN _____ DAYS
☐ Medicine Clinic/
Surgery Clinic (Memorial) 348-5530 IN _____ DAYS
☐ Surgery Clinic (General) 348-6355 IN _____ DAYS
☐ Other: Primary Doctor IN _____ DAYS

☐ FOR FOLLOW-UP CARE, PHONE: _____
 ADDRESS: _____
 (Call sooner if you feel it is necessary)

- ☐ THE MEDICATION RECEIVED IN THE EMERGENCY DEPARTMENT MAY CAUSE DROWSINESS. YOU ARE WARNED AGAINST DRIVING OR OPERATING MACHINERY FOR:
- ☐ 6 HOURS. ☐ 12 HOURS ☐ _____ HOURS

OTHER INSTRUCTIONS: Children's Motrinor
Advil 1 to 2 spoon every 6 hours
for 24 hours.

If symptoms persist - may
need referral to orthopedic.

**DEPOSITION
EXHIBIT**

1
1-16-04

FILE

LAMBERT & NEW CHARLESTON, WV

ATTORNEYS AT LAW

2002 JUL 17 A 4:31

PAMELA A. LAMBERT #2128
STEPHEN P. NEW #7756

PO DRAWER 926
U. S. ATTORNEY, YWV 25621
PH. 304-664-3096
FAX: 304-664-8640

July 15, 2002

Alvis Porter
Logan County Circuit Clerk
Logan County Courthouse
300 Stratton Street
Logan, W.V., 25601

Dear Mr. Porter:

Please find enclosed for filing the following documents:

Certificate of Service for Plaintiff's Response to Defendant Gordon J.
Green's First Set of Interrogatories and Requests for Production of
Documents

Thank you very much!

Sincerely
LAMBERT & NEW

PAL/ma


PAMELA A. LAMBERT

**DEPOSITION
EXHIBIT**

P/16
1-76-04

Trevor's Timeline

April 18, 2000	Trevor first started hurting
April 19, 2000	Trevor hurt for several hours today
April 20, 2000	Trevor is having episodes in the morning and at night
April 21, 2000	Trevor's episodes seem to be lasting longer
April 22, 2000	Trevor's episode made him unable to walk today for several Hours
April 23, 2000	Trevor had lost the use of the right leg for several hours and he is holding his back now
April 24, 2000	Trevor had an episode so severe that when it hits, he freezes and cries with his back and legs hurting
April 25, 2000	First visit to Community Health Foundation. X-rays were taken and nothing found. Dr. Tordilla and his physician assistant suggest that perhaps he hurt himself playing and to give him Tylenol. It should pass in a few days.
April 26, 2000	Second visit to Community Health Foundation. They order blood work and everything is normal. He asks if Trevor has had any recent flus, colds, flu, bronchitis, or asthma. I told him he hasn't been sick. He said he thinks Trevor is suffering from Sinovitis. They say that if the pain persists, they may refer him to a bone specialist at CAMC.
April 27, 2000	I become very worried and consult a friend that is a physician assistant. She states that she has no idea what is wrong and consults a pediatrician who suggests that it may possibly be Rheumatoid Arthritis. The physician assistant talks to the regular treating physician, in the clinic, and gets him to order blood work to check for Rheumatoid Arthritis. The blood test is negative.

EXHIBIT

G

April 30, 2000 Trevor gets up hurting. This episode is very bad. He screams with the pain and the Motrin is not helping. I took him to CAMC Womens and Childrens Hospital ER. This episode lasts from 9:30 am until around 2:30 p.m. They do x-rays and blood work and all is normal. They state that they can't find anything and agree with Community Health Foundation that it is possibly Sinovitis.

May 1, 2000 Trevor is not getting any better and I keep calling the doctor and he says that he doesn't know what is wrong and it should pass in a few days. I am worried so I call the physician assistant and ask for a favor. She gets me a referral to WVU Orthopedic Division, Dr. Eric Jones.

May 8, 2000 This is the appointment with Dr. Jones and he states that there is no orthopedic reason as to why Trevor is experiencing this pain. He gives us a referral to the rheumatoid Arthritis Division. This department is very busy and may take quite some time to get an appointment.

June 12, 2000 We go to the Rheumatoid Arthritis division and Trevor is evaluated by Dr. DiBartolomeo who is a specialist in Rheumatoid Arthritis. He states that Trevor is not symptomatic to Rheumatoid Arthritis, but the most inexpensive way to find out is to take him home and have an eye exam completed. This eye exam must be completed by an eye surgeon who can look behind the eyes.

June 14, 2000 We get an appointment with the eye specialist and am awaiting the day. Trevor is getting worse as the days go by. He is taking a complete bottle of Motrin a day. Trevor is now getting choked on his food and is refusing to eat.

June 20, 2000 We go to the appointment at WVU and Dr. DiBartolomeo states that he is unsure of the problem and wants to admit Trevor. When Trevor is admitted, the team of doctors come in and question me about Trevor's problems. He states that I am with him most of the time and should know where the problem is. I told him I think that it is in the back and legs because that is what he is complaining of. Dr. Burns, the

pediatrician, agrees and sets up a MRI first thing in the morning.

- June 21, 2000 The MRI is completed this morning and we are waiting for the results. The doctor comes in around 8:00 p.m. and tells me that Trevor suffers from a spinal cord tumor. He says that Trevor's case will be turned over to the Neurology Department and they will come in to talk to me after I have time to calm down.
- June 22, 2000 The neurosurgeon, Dr. Julian Bailes, comes in to discuss the tumor and the options we have at this point. He shows me the tumor on the films and tells me it is unusually large for a child Trevor's age. Also, they will have to perform another MRI of the brain to see if any tumors are located in the brain. He is also concerned that Trevor is not eating and I explain that he is getting choked on his food.
- June 23, 2000 Dr. Bailes comes in to discuss the options to us after the brain MRI is completed. There is no tumors in the brain, only the spinal cord. The problem is that the tumor is inside the spinal cord. The first option is to do nothing and the tumor is so close to the brain stem that it grows to the brain stem and Trevor dies. The second option is surgery and take the risk of paralysis or death. Dr. Bailes says that special arrangements have to be made for the surgery and he would let Trevor go home until the surgery.
- June 24, 2000 Trevor is released from the hospital. He is put on a steroid to help reduce the swelling and possibly help the pain. Dr. Bailes will call when the surgery is scheduled.
- June 28, 2000 Dr. Bailes called and the surgery is scheduled for July 6, 2000. I told him that the steroid helped Trevor because he is not having as much pain and is now eating.
- July 6, 2000 The day of the surgery. We were at the hospital at 7:00 a.m. and the surgery lasted about 8 1/2 hours. Dr. Bailes came out and told us that he thought he got all of the tumor. He

says that Trevor is taken to PICU and we can see him in about two hours. He is unable to move. He is paralyzed from the neck down.

- July 7, 2000 Trevor is in PICU and is doing good. We are unable to pick him up due to the neck brace. We may get to hold him tomorrow. He has x-rays to insure the vertebrae are still intact. Today he moved his fingers.
- July 8, 2000 Trevor is coming along great, he is coming off the morphine and now is asking for something to drink. He is now moved out of PICU and into a private room where the family can visit.
- July 9, 2000 Trevor ran a fever today and there is possible infection. They keep doing blood work and everything is normal. The doctor says it is a typical reaction to the surgery and since his first therapy session was today, he thinks it is possible that the therapy could be causing the fever. He is now moving his arms very well.
- July 10, 2000 The doctor came in today and said he thinks that there is a very good possibility that Trevor could regain the use of his legs. We still have not got the pathology report back.
- July 11, 2000 Today the pathology report came back and Dr. Bailes explained to me that it is an Astrocytoma Stage II. He says that this means it has some malignant cells but not a great risk for cancer. He says Trevor has to have an MRI every six months for at least five years and the one a year thereafter.
- July 12, 2000 Trevor is released from WVU Childrens Hospital and transferred to HealthSouth Mountain View Rehabilitation. We check in at HealthSouth and they get us into a room to get settled and therapy starts tomorrow.
- July 13, 2000 The morning started with Physical Therapy and Trevor is scared to stand. He will not let go of me or the therapist. Then he has Occupational Therapy next and he is getting over the fear.

July 14, 2000 Today Trevor sat up by himself for the first time since the surgery. The therapist was pleased that he sat up.

July 15, 2000 Trevor sat up and played ball with the therapist. We got a pass to take him out to the store and go shopping.

July 16, 2000 Trevor is very depressed due to everyone having to go back to their work schedule. They will visit when they can.

July 17, 2000 The therapist says that Trevor shows signs of some feeling coming back in the legs.

July 18, 2000 Trevor stood in a standing frame today for 20 minutes.

July 19, 2000 He is eating very well and getting stronger by the day. He stood again for 20 minutes. He was able to take his first bath since the surgery. We were unable to take the collar off until they contacted Neurosurgery to get an OK. But we can take it off to bath him as long as we support his head.

July 20, 2000 Doctors appointment today to have the surgery site checked and do a routine check-up. Doctor says everything is OK.

July 21, 2000 to July 30, 2000 Trevor is doing great in therapy. He seems to do a little more each day.

July 30, 2000 We are up at 2:00 a.m. and in an ambulance to WVU ER where he will be evaluated by the Neurosurgeon. He has a bad place on his back that needs to be checked. We are not sure if it is a pressure ulcer or a vertebrae out of place. It was just a pressure ulcer from where he is in the wheelchair all day. We will have to adjust the wheelchair.

August 1, 2000 to August 7, 2000 Trevor is doing great in therapy. He improves every day.

August 8, 2000 Trevor is released and we are on our way home with him. He is so happy that we are going home. The rehab has made arrangements for a wheelchair and standing frame at Boll Medical.

August 31, 2000 Back to see Dr. Bailes for a check-up. The x-rays are great and he thinks Trevor is doing great. He says to follow up on October 12, 2000.

September 11, 2000 Trevor's first day of therapy. He is very scared and will not cooperate.

September 13, 2000 Took Trevor to WV Orthosis and Prosthetics to be fitted for braces.

September 14, 2000 Trevor had therapy and is starting to cooperate better.

September 15, 2000 He has therapy today and they will start stretching exercises.

September 25, 2000 Trevor has another appointment with WV Orthosis and Prosthetics to make sure that the mold is correct and fits. Now they have to fit the leg and ankle braces on the larger brace that fits around his waist.

September 26, 2000 Trevor has therapy today. He can now sit up without any help and is doing better.

September 27, 2000 Trevor is back at WV Orthosis and Prosthetics to pick up the braces.

September 28, 2000 Trevor had therapy today.

October 2, 2000 Therapy today.

October 4, 2000 Therapy.

October 6, 2000 Therapy.

October 9, 2000	Therapy.
October 10, 2000	I have to take Trevor to Charleston to pick up the wheelchair. He is reluctant to get in but after he gets in, he seems to like it.
October 11, 2000	Therapy.
October 12, 2000	Back to see Dr. Bailes and Dr. Jaynes to follow up from the last appointment. They think he is doing great and am pleased that he has gained some weight.
October 13, 2000	Therapy.
October 16, 2000	Therapy.
October 17, 2000	Therapy.
October 18, 2000	I took Trevor to Boll Medical again to pick up the standing frame. He doesn't like this thing at all. He is afraid of falling. It will take some time to get him used to it.
October 19, 2000	Therapy.
November 3, 2000	I went back to Boll Medical to get the
November 30, 2000	Dr. Bailes wants to follow-up with Trevor. He says Trevor is doing well and he will see us in six months.
January 7, 2001	Back to Boll Medical to get the adjustments made to the wheelchair. We also picked up accessories ordered for the wheelchair.
March 7, 2001	Return MRI at the Physicians Office Center.
March 8, 2001	Follow-up with Dr. Bailes on the MRI. The MRI did not show anything at this point. Dr. Bailes is hoping that the tumor does not come back.

August 21, 2002

Another MRI was taken today to follow-up from the surgery.

August 22, 2002

Dr. Bailes has looked at the MRI and the MRI indicated a change has occurred in the spinal cord. The tumor is reoccurring.

August 28, 2002

Telephone call from Dr. Bailes, he does not feel that we should do anything at this point. He had contacted Dr. Fred Epstein of New York who is a specialist in this sort of tumor. Dr. Epstein does not suggest any action at this time. We will schedule another MRI in six months.

February 13, 2002

MRI is completed and we will get the results tomorrow.

February 14, 2002

The tumor is definitely back. The MRI shows some changes and Dr. Bailes is concerned. He wants to discuss the case with another neurosurgeon at the hospital and will call me with the results of the study.

March 20, 2002

As of this date, I have not heard anything from Dr. Bailes. I will call him today.

KENNEDY v. USA COMMUNITY HEALTH FOUNDATION OF MAN, et al. 1/21/04 JULIAN BAILES, M.D.

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

PENNY KENNEDY, and :
RAYMOND KENNEDY, individually :
and as guardians and next friends: :
of TREVOR KENNEDY, an infant :
under the age of eighteen, : CIVIL ACTION NO
Plaintiffs, : 2:03-0175

v :

UNITED STATES OF AMERICA, :
COMMUNITY HEALTH FOUNDATION OF :
MAN, WEST VIRGINIA, INC., and :
PLARIDEL TORDILLA, M.D., :
individually, CHARLESTON AREA :
MEDICAL CENTER, INC., :
dba WOMEN AND CHILDREN'S :
HOSPITAL OF WEST VIRGINIA, dba :
WOMEN AND CHILDREN'S HOSPITAL, :
dba CAMC CHILDREN'S HOSPITAL, :
dba CAMC WOMEN'S HOSPITAL, dba :
CAMC WOMEN AND CHILDREN'S :
HOSPITAL, INPHYNET HOSPITAL :
SERVICES, INC., a foreign :
corporation, doing business in :
the State of West Virginia; and :
GORDON J. GREEN, M.D., :
individually :

Defendants :

17
18 * * *
19 Deposition of Julian Bailes, M.D.
20 Wednesday, January 21, 2004
21 * * *

KENNEDY v. USA COMMUNITY HEALTH FOUNDATION OF MAN, et al. 1/21/04 JULIAN BAILES, M.D.

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">* * *</p> <p style="text-align: center;">Deposition of Julian Bailes, M.D. Wednesday, January 21, 2004 * * *</p> <p>a witness herein, taken on behalf of the defendant, United States of America, in the above-entitled cause of action pursuant to notice and the Federal Rules of Civil Procedure by and before Tammie Puls, Registered Professional Reporter and Notary Public within and for the State of West Virginia, taken at West Virginia University School of Medicine, Department of Neurosurgery, One Medical Center Drive, Suite 4300, Morgantown, West Virginia 26505 commencing at 5:09 p.m.</p>	<p style="text-align: right;">Page 4</p> <p>APPEARANCES (cont):</p> <p>On behalf of the Defendants, Charleston Area Medical Center, Inc.,: CHERYL EIFERT, Esquire Office of General Counsel, 501 Morris Street, Charleston, West Virginia 25301 Telephone (304) 388-7532 Fax: (304) 388-6027 E-mail: cheryl EIFERT@camc.org</p> <p>On behalf of the Defendants, Inphynct Hospital Services, Inc., and Gordon J. Green, M.D.: KAREN TRACY McELHINNY, Esquire Shuman, McCuskey & Slicer, PLLC, The Virginia Center, 1411 Virginia Street, East, Suite 200, P.O. Box 3953, Charleston, West Virginia 25339 Telephone: (304) 345-1400 Fax: (304) 343-1826 E-mail: kmcelhinny@shumanlaw.com</p>
<p style="text-align: right;">Page 3</p> <p>APPEARANCES:</p> <p>On behalf of the Plaintiffs: SAMUEL A. HRKO, Esquire The Segal Law Firm, 810 Kanawha Boulevard, East, Charleston, West Virginia 25301 Telephone: (304) 344-9100 Fax: (304) 344-9105</p> <p>On behalf of the Defendants, United States of America, Community Health Foundation of Man and Plaridel Tordilla, M.D.: FRED B. WESTFALL, JR., Assistant U.S. Attorney, United States Attorney's Office, U.S. Department of Justice, Southern District of West Virginia, Robert C. Byrd U.S. Courthouse, 300 Virginia Street, East, Room 4000, Charleston, West Virginia, 25301 Telephone: (304) 345-2200 Fax: (304) 347-5104 E-mail: fred.westfall@usdoj.gov</p>	<p style="text-align: right;">Page 5</p> <p>.....I N D E X.....</p> <p>WITNESS.....EXAMINATION BY.....PAGE</p> <p>Julian Bailes, M.D.....</p> <p>.....Mr. Westfall.....6</p> <p>.....Ms. Eifort.....23</p> <p>.....Ms. McElhinny.....27</p> <p>.....Mr. Hrko.....33</p> <p>.....Mr. Westfall.....38</p> <p>.....Ms. Eifort.....41</p> <p>.....Mr. Hrko.....43</p> <p>.....E X H I B I T S.....</p> <p>.....IDENT</p> <p>Bailes Deposition Exhibit No. 1.....6</p> <p>Bailes Deposition Exhibit No. 2.....20</p> <p>Bailes Deposition Exhibit No. 3.....40</p>

2 (Pages 2 to 5)

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Page 6

1 * * *

2 JULIAN BAILES, M.D.

3 being first duly sworn, was examined and deposed

4 as follows:

5 * * *

6 EXAMINATION

7 BY MR. WESTFALL:

8 Q. Doctor Bailes, my name is

9 Fred Westfall. I represent the United States,

10 which is covering Community Health Foundation of

11 Man and Doctor Tordilla in this case. Before the

12 deposition began, your office gave us a copy of

13 your curriculum vitae, which I'm going to have

14 marked as Exhibit No. 1. I'd like for you to take

15 a look at that, please.

16 A. (Witness complies).

17 Q. Is that a true and accurate summary of

18 your qualifications, education and training and

19 experience in the field of neurosurgery?

20 A. Yes, it is.

21 Q. You're licensed to practice medicine

22 in the State of West Virginia?

23 A. Yes.

24 Q. And you're board certified in

Page 7

1 neurological surgery?

2 A. Yes.

3 Q. Doctor, during the course of your

4 care-- or course of your practice here at West

5 Virginia University, did you come in contact with

6 a patient by the name of Trevor Kennedy?

7 A. Yes, I did.

8 Q. And could you just briefly tell me how

9 you came about seeing this particular young man?

10 A. Trevor was referred to me at the

11 neurosurgery clinic, and I know that-- or at least

12 to my records, Doctor Tordilla, T O R D I L L A,

13 had been either the or one of the referring

14 doctors. And he had seen Doctor Eric Jones who is

15 a-- specializes in pediatric orthopedic problems

16 and that was in May of 2000. Doctor Jones did not

17 operate or treat him specifically.

18 Then he was seen by our pediatric

19 department here shortly after that, the next

20 month, June of 2000. Actually, was admitted to

21 WVU Hospital by the Department of Pediatrics from

22 June the 20th to June the 24th, 2000.

23 I saw him, then, after that time and I

24 think it was actually during that hospitalization

Page 8

1 that we were first notified that he had a

2 significant problem in his neck and his spine.

3 Q. Doctor, is it your understanding in

4 this case that-- let me go back.

5 In terms of the history that you

6 received concerning Trevor, did you receive a

7 history that he was seen at the Community Health

8 Foundation of Man on April the 25th of 2000, or

9 about that time?

10 A. Well, I don't have any specifics on

11 that. To my recollection, we first saw him in the

12 hospital as a consult and then subsequently we saw

13 him back for surgery and then for the follow-up

14 care.

15 Q. And based on the history that you did

16 have, you knew that before he was admitted to the

17 hospital here at WVU, he had been seen by

18 Doctor Jones, the pediatric orthopedic surgeon;

19 Is that correct?

20 A. Yes.

21 Q. And is it your understanding that

22 Doctor Jones did not diagnose the tumor that was

23 eventually found in Trevor's spine?

24 A. Correct.

Page 9

1 Q. And I believe he was also seen by a

2 rheumatologist or the rheumatology department here

3 in the beginning of June, on June the 12th of

4 2000. Do you recall receiving any history about

5 that particular evaluation?

6 A. Yes. And I think if you read Doctor--

7 I don't know if you have Doctor Jones' letter from

8 May the 8th, but he thought at that time it was a

9 juvenile arthritis problem. Recommended just to

10 observe him and use Motrin on an intermittent

11 basis. Going on to say that this may burn itself

12 out, the symptoms. And if he was not getting

13 better in the next month or two, he would

14 recommend a bone scan and being seen by a

15 pediatric neurologist-- rheumatologist. That's

16 when that occurred.

17 Then I think the next major event was

18 when he was admitted here for those four days, as

19 I mentioned earlier.

20 Q. Now, you reviewed the MRI scan that

21 was performed on Trevor's spine; is that correct?

22 A. Yes, I did.

23 Q. Could you tell us what your

24 interpretation or your review of that MRI

3 (Pages 6 to 9)

KENNEDY v. USA COMMUNITY HEALTH FOUNDATION OF MAN, et al. 1/21/04 JULIAN BAILES, M.D.

Page 10

1 revealed?
 2 A. He had a large tumor extending from
 3 the C4 to the T4 level. It was enhancing. It was
 4 filling, essentially, almost the entire spinal
 5 cord. And it was, radiographically, almost
 6 certain to be a tumor.
 7 Q. And then, Doctor, did you sit down and
 8 talk to the family before the surgery and discuss
 9 the situation with them?
 10 A. Yes, I did.
 11 Q. Could you just briefly tell us what
 12 you told them?
 13 A. Well, I probably summarized it very
 14 well in the history of the operative note from
 15 7-6, 2000. I can read that or I can--
 16 Q. That's fine.
 17 A. I can try to paraphrase from memory,
 18 whatever you would like.
 19 Q. Paraphrase from memory and looking at
 20 the record would be fine.
 21 A. Well, I said there was a very
 22 difficult and complex situation discussed in great
 23 detail on several occasions with the patient's
 24 family. And the parents were informed that this

Page 12

1 (Whereupon, a discussion was
 2 held off the record)
 3 * * *
 4 A. This tumor is exceedingly rare and the
 5 incidence is about 5 for every 10 million
 6 children. So if you have-- you'd have to have--
 7 there is only a few in the United States every
 8 year. The only person in the world who has had a
 9 big experience or published about it is
 10 Doctor Fred Apstein, A P S T E I N, in New York.
 11 I talked to Doctor Apstein before and
 12 after surgery about Trevor with him. And I
 13 believe even offered-- and I may have documented
 14 that, offered the family that they could go see
 15 Doctor Apstein. They didn't really have the ways
 16 and means and I think were not really interested
 17 in going and were very content to stay here, is my
 18 recollection.
 19 Q. Then, as I understand from looking at
 20 your operative note, after discussing this with
 21 the family, you then decided to go ahead and
 22 perform the surgery to remove the tumor?
 23 A. Yes, I did.
 24 Q. Could you just briefly tell us, when

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1 lesion, although possibly not aggressively
 2 malignant, could lead to further weakness and
 3 possibly paralysis, including quadriplegia. There
 4 was no chemotherapy or radiation therapy that
 5 would be cured.
 6 So I basically told them that the only
 7 option for this sort of tumor is surgery. And the
 8 purpose of surgery is to do two things. One is to
 9 make a tissue diagnosis to find out for sure what
 10 it is. And secondly, to try to remove as much one
 11 thinks they safely can.
 12 Q. As I understand it, during-- according
 13 to your operative note, you offered them the
 14 option they could go to New York where apparently
 15 there was a medical facility that performed
 16 surgery on this type of tumor on a significant
 17 basis. What was the family's--
 18 * * *
 19 (Interruption)
 20 * * *
 21 THE WITNESS: May I get
 22 this?
 23 MR. WESTFALL: Sure.
 24 * * *

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1 you opened up his back to see the tumor, what did
 2 you see? I mean, what did the tumor look like?
 3 A. It looked like a typical spinal cord
 4 astrocytoma. It was like a big sausage. And the
 5 amazing thing is it had grown so slowly that it--
 6 as they typically do, that it had thinned out his
 7 spinal cord to a thin ribbon.
 8 And so to take this out, actually you
 9 have to split the spinal cord in two, which is
 10 fairly significantly harrowing to do that in
 11 anyone, especially a child. And you split the
 12 spinal cord in two and the tumor goes all the way
 13 from the back of the spinal cord, the dorsal part,
 14 all the way through the spinal cord to the front.
 15 And the spinal cord, itself, is a thin ribbon
 16 splayed on either side.
 17 And Trevor woke up paralyzed. And,
 18 you know, although we had good-- we monitor
 19 sensory and motor potential, we send electrical
 20 signals through these tracts from the brain to the
 21 body and the body back to the brain the whole
 22 time. And those are maybe to give the surgeon
 23 more fortitude, I guess. But he maintained his,
 24 which is what I wanted, and to me, made me feel

4 (Pages 10 to 13)

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1 that I was not venturing into the spinal cord.
 2 But the spinal cord was maybe just a few
 3 millimeters thick, maybe one or two millimeters on
 4 either side.

5 As far as I could tell, we got the
 6 entire tumor out. We operate magnified about 30
 7 times under a microscope, and even that is not a
 8 guarantee. But I got what I thought was a good
 9 resection and I called it at the time
 10 contemporaneously a gross total resection.

11 Q. Doctor, you mentioned that this tumor
 12 was slow growing. What do you mean by that?

13 A. Well, these tumors, in some ways,
 14 really aren't malignant. They grow and they grow
 15 slowly and that's why his entire spinal cord,
 16 basically, from the fourth cervical to the fourth
 17 thoracic, was nearly completely replaced by tumor,
 18 because it-- the only way that anybody could
 19 tolerate that would be a very slow growth that
 20 slowly thins out the spinal cord tracts.

21 Q. When you mean slow growth, are we
 22 talking over a period of several months, as
 23 opposed to weeks?

24 A. Probably years.

Page 16

1 operation, and so nothing unexpected occurred.

2 Q. Doctor, in the records I've seen a
 3 copy of the pathology report concerning the tumor.
 4 I'd like to show that to you. I don't know if you
 5 have a copy.

6 A. Okay.

7 Q. Let me ask you a couple questions
 8 about this. I understand it looks like
 9 Doctor Schochet was the person who did the
 10 pathological diagnosis on this tumor; is that
 11 correct?

12 A. Yes.

13 Q. He is a neuropathologist?

14 A. Yes.

15 Q. Okay.

16 What was his conclusion as to what was
 17 seen or how did he interpret the pathological
 18 specimen?

19 A. Grade II astrocytoma.

20 Q. And when we talk about a Grade II,
 21 what is the significance of the fact it's labeled
 22 Grade II?

23 A. Well, most people would say that that
 24 would be a tumor that is not technically highly

Page 15

1 Q. Years.

2 Now, after the surgery was completed,
 3 how did he progress during the rest of that
 4 hospital admission?

5 A. He had probably a typical
 6 hospitalization for someone, a child this young.
 7 You know, it's very frustrating and hard to
 8 communicate and he stayed here until he was
 9 actually discharged six days later. He was
 10 transferred from here to a rehabilitation
 11 facility, as people in this condition would need
 12 to be. But I would say he had a fairly
 13 unremarkable hospitalization.

14 Let's see here. My discharge summary
 15 of 7-12, 2000, talks about he had a low grade
 16 fever. Diet was advanced. He had to be
 17 catheterized because his bladder didn't work.
 18 Lower extremities, his legs were flaccid. They
 19 were paralyzed. He had numbness from the
 20 mid-chest up. But he withdrew his legs to pain,
 21 which to me meant that there was still information
 22 getting through.

23 So he did, I think, overall very well
 24 for someone two years old to have such an

Page 17

1 malignant, but they do tend to recur and regrow
 2 with time.

3 Q. And in this particular case, Grade II,
 4 does that also mean, again, it's a slow growing
 5 tumor?

6 A. Yes.

7 Q. And with Trevor, you mentioned that he
 8 had his rehab course after he left the hospital.
 9 Have you seen him since he completed his rehab
 10 course?

11 A. Yes, I have.

12 Q. And what is-- can you just kind of
 13 summarize your visits with him since he left the
 14 rehab hospital and what his condition has been?

15 A. Well, he was seen here fairly
 16 regularly, of course, in the first few months and
 17 the first year postoperatively. Then he's been
 18 seen, I guess, annually after that. I think he
 19 made slow, but steady progress and good progress.
 20 And he was advanced through walking braces and has
 21 not had a lot of pain, as far as I know, even
 22 though we had to operate on his neck.

23 His x-rays of his neck look okay, and
 24 overall he is doing well. I haven't seen him in a

5 (Pages 14 to 17)

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1 while, but I haven't heard otherwise. I don't
 2 know how he is currently, but...
 3 Q. Doctor, what is his likely prognosis
 4 as far as his ability to recover neurologically?
 5 Is he going to be able to recover all of his
 6 function or is he going to have some impairment in
 7 the future?

8 A. He got this so early that he probably
 9 will do, overall, very well. I think he may not
 10 ever be a star athlete. And again, if I could see
 11 him and examine him today, I could give you an
 12 even better idea.

13 But when something occurs in age 2,
 14 the plasticity of the spinal cord, the ability to
 15 regenerate or recover and recruit other fiber
 16 tracts that can take over function is very well
 17 for the central nervous system. So overall, I
 18 think he should do fairly well. The big question
 19 is what's going to happen to the tumor.

20 Q. And when you say that, are you talking
 21 about a chance of recurrence of the tumor?

22 A. Yes.

23 Q. And how would that occur, or why would
 24 that occur?

Page 19

1 A. It just occurs because this is the
 2 nature of the way that these tumors behave. And
 3 again, they're not technically malignant in that
 4 they're not cancer cells and they don't grow and
 5 spread to the other parts of the body. But they
 6 tend to, because this area of the spinal cord is
 7 probably never an area that you can be very
 8 aggressive with. And, for instance, you can't--
 9 as opposed to every other organ in the body,
 10 including the brain, you can't get a margin in a
 11 spinal cord tumor.

12 You know, the spinal cord, I say, is
 13 the most complicated structure on the face of the
 14 earth. I mean, it's about the size of your index
 15 finger and everything that goes from the brain to
 16 the body and the body back to the brain goes
 17 through it. The tracts that control the movement
 18 on one half of your body, the cortical spinal
 19 tracts, are about the size of a toothpick and they
 20 carry over a million fibers.

21 So there is just no way that you have
 22 any leeway as a surgeon, even operating magnified,
 23 that you can get a margin. So, therefore,
 24 probably we leave some cells behind or we leave

Page 20

1 part of the tumor behind, even though we can't see
 2 it.

3 So these tumors tend, I think, to
 4 slowly recur. I think they're very patient
 5 dependent. Some live a long time and they never
 6 bother them and some tend to come back sooner.

7 Q. Doctor, I want to show you what I'm
 8 going to have marked as Exhibit No. 2. It is from
 9 a web page at the Mayo Clinic. I'd like for you
 10 to take a look at that for a moment, if you would,
 11 please.

12 * * *

13 (Short pause)

14 * * *

15 A. Okay.

16 BY MR. WESTFALL:

17 Q. In that particular web page from the
 18 Mayo Clinic, there is a statement about the usual
 19 time from the onset of symptoms to the time of the
 20 diagnosis for astrocytomas, and I can't remember
 21 exactly, but I believe it may say something like
 22 from two to three years in that particular
 23 paragraph?

24 A. Yes.

Page 21

1 Q. Do you agree with that statement?

2 A. Yes, I already said that earlier.

3 Q. And in your experience, have you ever
 4 seen a primary care physician make the diagnosis
 5 of astrocytoma, in your career?

6 A. No, ordinarily they wouldn't.

7 Q. I take it that that's a diagnosis that
 8 would normally be made by a neurosurgeon or some
 9 other specialist, maybe a neurologist?

10 A. Usually, yes.

11 Q. Okay.

12 Now, Doctor, if the surgery had been
 13 performed-- on his spine had been performed at
 14 some point after April 25th of 2000, and prior to
 15 May 8, 2000, would the outcome in his case have
 16 changed any?

17 A. Between April?

18 Q. April 25, 2000, and May 8, 2000.

19 A. No, it would have been the same.

20 Q. And if the surgery had been performed
 21 any time from May 8th to the time that
 22 Doctor Jones saw the patient, up until the time
 23 the surgery was actually performed, would the
 24 outcome have been any different?

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 A. I don't see how, no.</p> <p>2 Q. In terms of his future medical care,</p> <p>3 if the surgery had been performed between April</p> <p>4 the 25th and May the 8th, would the outcome have</p> <p>5 been any different?</p> <p>6 A. No.</p> <p>7 Q. In terms of what he needs for the</p> <p>8 future?</p> <p>9 A. In my opinion, no.</p> <p>10 Q. And in terms of his ability to recover</p> <p>11 and his future functioning, would that have</p> <p>12 changed at all if the surgery had been performed</p> <p>13 between April the 25th and May the 8th?</p> <p>14 A. Well, again, I mean, this is a tumor</p> <p>15 that was probably six inches long and slowly</p> <p>16 growing, so I don't think it would have been</p> <p>17 appreciably of a different size two or three</p> <p>18 months before. And the treatment would have been</p> <p>19 the same and the risk of the treatment would have</p> <p>20 been the same.</p> <p>21 Q. So in other words, from April the</p> <p>22 25th, up until the time that you operated on</p> <p>23 Trevor, this tumor probably did not grow at any</p> <p>24 significant degree, did it?</p>	<p style="text-align: right;">Page 24</p> <p>1 room physician deviated from accepted standards of</p> <p>2 care by not making this diagnosis?</p> <p>3 A. I'll do whatever-- if you want me to</p> <p>4 look at something, I can, but I don't have those</p> <p>5 records.</p> <p>6 Q. Okay.</p> <p>7 A. I wasn't planning on doing that.</p> <p>8 Q. Sitting here today, I assume you have</p> <p>9 no opinions on standard of care and whether anyone</p> <p>10 deviated from accepted standards of care?</p> <p>11 A. I haven't really thought about it. I</p> <p>12 don't really have an opinion, unless you want to</p> <p>13 ask me a question.</p> <p>14 Q. Okay.</p> <p>15 Well, you said this tumor is an</p> <p>16 exceedingly rare tumor; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. I think you agreed with the website</p> <p>19 that said sometimes it takes two to three years</p> <p>20 for a diagnosis to be made; is that true?</p> <p>21 A. I think what it said was that, you</p> <p>22 know, it's a slow growing over several years, as I</p> <p>23 even said earlier. And yeah, I mean, the</p> <p>24 diagnosis typically is made somewhere along the</p>
<p style="text-align: right;">Page 23</p> <p>1 A. No, it was probably basically the same</p> <p>2 size.</p> <p>3 MR. WESTFALL: I think that's</p> <p>4 all I have. I'll pass on and try to keep it</p> <p>5 within the hour.</p> <p>6 THE WITNESS: Sure.</p> <p>7 * * *</p> <p>8 EXAMINATION</p> <p>9 BY MS. EIFORT:</p> <p>10 Q. Doctor Bailes, my name is</p> <p>11 Cheryl Eifort. I represent Charleston Area</p> <p>12 Medical Center. The opinions that you just gave</p> <p>13 about the size of the tumor and the outcome, do</p> <p>14 you render those opinions to a reasonable degree</p> <p>15 of medical certainty?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay.</p> <p>18 In this case, Trevor Kennedy was seen</p> <p>19 on one occasion in the emergency department at</p> <p>20 CAMC on April the 30th, do you have any of the</p> <p>21 medical records from that visit?</p> <p>22 A. No, I don't.</p> <p>23 Q. So I take it you would not be</p> <p>24 rendering any opinions about whether the emergency</p>	<p style="text-align: right;">Page 25</p> <p>1 course of the symptoms. It's made more difficult</p> <p>2 in someone of this age who can't communicate and</p> <p>3 doesn't have as fluid of function and dexterity</p> <p>4 and everything else as an older person does.</p> <p>5 Q. Okay.</p> <p>6 And I assume if you've got a child</p> <p>7 that's complaining of some back pain or a mother</p> <p>8 who is complaining that her child has some back</p> <p>9 pain and sometimes isn't walking normally, that</p> <p>10 wouldn't put an astrocytoma at the top of your</p> <p>11 list of diagnoses; is that fair to say?</p> <p>12 A. That's correct, it would not be at the</p> <p>13 top.</p> <p>14 Q. Okay.</p> <p>15 You had talked a little bit about the</p> <p>16 fact that he may continue to have some</p> <p>17 improvement. I mean, how long are you looking at</p> <p>18 as far as when would you feel confident that he's</p> <p>19 leveled off and isn't going to have anymore</p> <p>20 improvement?</p> <p>21 A. I think probably most people say two</p> <p>22 years postop.</p> <p>23 Q. Two years post-op.</p> <p>24 And his operation was in 2000,</p>

7 (Pages 22 to 25)

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1 correct?
 2 A. Yes.
 3 Q. So wherever he was-- wherever he is
 4 now is probably where you think he is going to be?
 5 A. Yeah. Of course, you know, that's
 6 probably a number that we often quote for older
 7 people who are adult. It's hard to say, because
 8 he is still acquiring a lot of motor skills when
 9 he's 5 and 6 and 7. So again, he very likely
 10 could gain more function or adapt to his problem
 11 as he learns to ride a bike or so forth, if he
 12 even can, I don't know. But I would think he
 13 would continue to improve, so...
 14 Q. Okay.
 15 Regardless of when the diagnosis would
 16 have been made on Trevor, he would have required a
 17 surgery; is that right?
 18 A. Yes.
 19 Q. And I understand from some of the
 20 literature that I've looked at that when a child--
 21 a 2 year old has this kind of tumor, you don't
 22 typically do radiation or use those kinds of
 23 therapies; is that right?
 24 A. Correct.

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1 A. Correct.
 2 Q. And I take it that you don't consider
 3 yourself an expert in the field of emergency
 4 medicine; is that fair?
 5 A. Correct.
 6 Q. I think those are-- actually, one more
 7 question.
 8 My understanding from some of the
 9 other deposition testimony and from some of the
 10 medical records we've received in this case is
 11 that a Doctor Collins, who is part of this
 12 department, has taken over sort of following
 13 Trevor currently; is that correct?
 14 A. That's my understanding, yes.
 15 Q. Do you know about what time he joined
 16 the department here and when he would have started
 17 to get involved in Trevor's case?
 18 A. About two years ago.
 19 Q. Okay.
 20 And so if we wanted to talk with a
 21 physician about Trevor's current condition and his
 22 prognosis for future improvement or future
 23 recurrence of the tumor, would Doctor Collins be
 24 the person to talk with?

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1 Q. Okay.
 2 And in his case, this tumor had
 3 probably been there, he was 2 years old when it
 4 was diagnosed-- well, he was over 2 years old, a
 5 little over 2 years old, it had probably been
 6 there most of his life, I take it?
 7 A. I would suspect, yes.
 8 Q. To a reasonable degree of medical
 9 probability?
 10 A. Yes.
 11 Q. Okay.
 12 MS. EIFORT: I don't have
 13 anything further. Thank you.
 14 * * *
 15 EXAMINATION
 16 BY MS. McELHINNY:
 17 Q. Doctor, my name is Karen McElhinny. I
 18 represent Doctor Green and the emergency room
 19 physicians group at Charleston Area Medical
 20 Center.
 21 Just looking at your CV that has
 22 already been made an exhibit in this case, it
 23 looks like you are not board certified in
 24 emergency medicine; is that correct?

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1 A. Probably, yes.
 2 Q. Okay.
 3 Mrs. Kennedy was recently deposed.
 4 She says that you still, when they're up here for
 5 Trevor's six-month MRIs, that you do still stop by
 6 and say hello and take sort of personal interest
 7 in how he's doing, is that--
 8 A. Yes. I can't recall when I've seen
 9 him. It's probably been a year or so. If I know
 10 he is here, I try to see him, yes.
 11 Q. And based on that sort of informal
 12 observation, does it look to you like Trevor is
 13 continuing to be a tough little kid and sort of
 14 battle through this problem and develop new
 15 skills?
 16 A. Yes. The last time I remember seeing
 17 him, I thought he looked terrific. He was walking
 18 and playing and you really wouldn't know that he
 19 had a whole lot-- had been through a whole lot. I
 20 can't assume-- I can't imagine that he, you know,
 21 had a major problem and I didn't hear about it, so
 22 I assume he is still doing pretty well.
 23 Q. And you are the head of the department
 24 of neurosurgery here at WVU, correct?

8 (Pages 26 to 29)

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1 A. Correct.

2 Q. And in that capacity, would you have

3 some sort of supervisory role over Doctor Collins,

4 or?

5 A. Well, I try not to. Maybe

6 theoretically.

7 Q. But I take it since you've taken kind

8 of a personal interest in Trevor, you probably--

9 like you said, you would have heard about it if he

10 had a major problem?

11 A. Yes, I think I would know about it.

12 I'm sure he would come to me.

13 Q. In the deposition of Mr. and Mrs.

14 Kennedy which was recently taken, they mentioned

15 that at some point they had been told that when

16 Trevor got older that he might need to have some

17 sort of operation to put a plate or something in

18 his neck, although currently they say he doesn't

19 have any problems holding up his head.

20 Based on your involvement in Trevor's

21 care, and I understand you're not currently

22 actively following him, but is he going to, in

23 your opinion, need some sort of future plate to be

24 put in his neck to stabilize his head or anything

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1 like that?

2 A. You know, I mentioned earlier that his

3 x-rays all looked okay and that he had the bone in

4 the back of the spine removed in order to get

5 inside the spinal canal. A lot of times if you do

6 that laminectomy at that early age-- I think maybe

7 we did a laminoplasty on him where we put it back.

8 I think we put the bone back. You know, sometimes

9 they don't.

10 And I say it's probably 50/50 chance

11 that he is going to end up with some sort of

12 deformity in his neck that may need a fusion, but

13 very likely not. To my knowledge, all his x-rays

14 have held up and looked good. I'm trying to look

15 for my...

16 Q. I have your operation summary.

17 A. Did I say laminoplasty?

18 Q. Yes. You say, under name of

19 procedure, you say C5 through T3 laminoplasty.

20 A. So that means we put the bone back. I

21 think we use-- I found it. I think we use these

22 absorbable plates, I say that on Page 4 of the

23 last paragraph. That we use these absorbable

24 plates to put the bone back. And so maybe it's

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1 working.

2 They used to be a problem, but it

3 was-- it should not be any kind of loss of

4 function. It would just be if he had neck pain

5 and was developing some deformity that needed to

6 be straightened, but thus far, he has not.

7 Q. When would you normally expect, in a

8 patient that was operated on so young, if that

9 problem was going to reoccur and the patient was

10 going to require a fusion, about how many years

11 postop would you expect to see that?

12 A. I would expect it in the first two or

13 three years, if it was going to be manifested.

14 The other time it could be manifested is when he

15 went through an adolescent growth spurt. So those

16 two times.

17 Q. Okay.

18 A. Ordinarily if it's going to happen,

19 you see it happen soon after surgery in the first

20 year or two they begin to deform.

21 Q. In your earlier testimony, and I don't

22 want to belabor this, I just want to make sure I

23 understand one point I think you made. You

24 indicated that you, in your consult with the

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1 family before the surgery, advised them of the

2 risks. And I think you said that any time you're

3 dealing with the spinal cord, it's such a small

4 area that there is always risks of paralysis and

5 obviously infection, various other things.

6 Is it fair to say that that's the case

7 when you're operating on a spinal cord tumor,

8 regardless of when the diagnosis is made of that

9 tumor?

10 A. Yes, those risks are the same.

11 MS. McELHINNY: I think those

12 are all the questions I have for you. Thank you.

13 MR. HRKO: Doctor, I just have

14 a few questions.

15 * * *

16 EXAMINATION

17 BY MR. HRKO:

18 Q. To follow up on that question, if a

19 tumor is smaller, are the risks any lower or

20 higher that there could be damage done?

21 A. It depends on several things. I mean,

22 any time you open someone's spinal cord in their

23 neck, the risk is extremely high. And it is

24 because if the tumor is a centimeter or whether